17827

(18,783.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 189.

WILLIAM H. JONES, JOHN HILL, AND EDGAR POE LEE, PLAINTIFFS IN ERROR,

vs.

ANDREW J. MONTAGUE, GOVERNOR OF VIRGINIA; DAVID Q. EGGLESTON, SECRETARY OF THE COMMONWEALTH OF VIRGINIA; MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF VIRGINIA, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Eastern District of Virginia,* } ss:

At a circuit court of the United States within and for the eastern district of Virginia, begun and held in the court rooms at the custom house, in the city of Richmond, on the first Monday of October, being the sixth day of same month, in the year of our Lord one thousand, nine hundred and two.

Present: The Honorable Edmund Waddill, Jr., judge; Morgan Treat, Esq., marshal, and M. F. Pleasants, clerk.

Among other were the following proceedings, to-wit:

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners,
versus
ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants. } In Prohibition. No. 1759.

Be it remembered that afterwards, at the said term, to-wit: on the 14th day of November, 1902, the following petition for writ of prohibition and exhibits were filed:

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia: Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants.	In Prohibition.	No. 1759.

To the honorable judges of said court:

Your petitioners, suing in this behalf of themselves and all others in like case who will come into this cause as parties hereto, state the following cause of action arising under the Constitution and laws of the United States:

First. That they, and each of them, are, and were at the time of the committing of the grievances hereinafter set forth, citizens of the United States, and citizens and residents of the State of Virginia, and of the third district of Virginia, as Federal courts are constituted.

Second. That they, and each of them, are, and were, at the time of the committing of the grievances hereinafter set forth, and still are, lawful voters of the State of Virginia, and as such entitled to vote for a Congressman for the third district of Virginia, as the congressional districts of said State are now constituted, at a general election for members of the House of Representatives of the United States, which should have been held, according to law, in the State of Virginia, Tuesday, November 4th, 1902.

3 Third. That they, and each of them, have, heretofore, for periods varying from sixteen to nine years, been citizens, residents and lawful voters of the Commonwealth of Virginia, under article 3, section 1, of the constitution of Virginia, which was ratified by the vote of the people of that State, July 6th, 1869, and under chapter VIII, section 62, of the Code of Virginia of 1887, enacted pursuant thereto by the General Assembly of Virginia in the year 1881 (Acts 1881–'2 c. 203, p. 214).

Fourth. That said constitution became the organic law of the State of Virginia under the following circumstances:

In the year 1861 a convention of the State of Virginia passed an

ordinance of secession, under which it was attempted to secede from the Federal Union, and to establish new political relations with other States under a new and distinct political compact known as the Confederate States of America. The persons filling the executive, legislative and judicial offices of Virginia, at the time said ordinance was passed, transferred their allegiance from the United States to the Confederate States and organized armed resistance to the authority, jurisdiction and sovereignty asserted over Virginia by the United States.

A war between the forces of the United States and Confederate States ensued, lasting over four years, during the progress of which elections occurred in Virginia from time to time, under a civil government which acknowledged allegiance to the Confederate States of America, so that, prior to the termination of said war, not only had the form of government existing in Virginia before the outbreak of said war disappeared, but the incumbents of all the offices in the State were parsons elected while they were under
4 a government and allegiance hostile to the United States.

The armed forces of the Confederate States and of Virginia were conquered by the forces of the United States in the year 1865, and the persons holding the offices under the civil government of the State fled, and the government administered by them was destroyed, upon the occupation of the capital and territory of Virginia by the armies of the United States.

The only actual government in Virginia from that time forth until the year 1870 was one of military occupation, or appointive civil government, subject to military control; both under the authority and terminable at the pleasure of the Congress of the United States.

The Congress of the United States passed, during the period aforesaid, a series of acts known as the reconstruction acts, framed upon the theory that, after the conquest of Virginia, no republican form of government existed in Virginia, and that it was the duty of the United States to make good to the State the constitutional guarantee of a republican form of government. By one of said acts the people of Virginia were permitted to assemble, frame a constitution, and submit it to Congress, after the legislature elected when said constitution was voted upon had assembled and ratified the amendments known as the XIVth and XVth amendments to the Constitution of the United States. Pursuant to that authority, the people of Virginia met in convention, framed a constitution, ratified it by popular vote July 6, 1869, and elected a legislature; and that legislature met, ratified said constitutional amendments and adjourned until the Congress of the United States should decide and determine whether the constitution adopted as aforesaid was satisfactory.

5 Among other provisions of said constitution were the following:

Art. III. Elective franchise and qualifications for office.

"SEC. 1. Every male citizen of the United States twenty-one years old, who shall have been a resident of this State twelve months, and of the county, city or town in which he shall offer to vote three months next preceding any election, shall be entitled to vote for a member of the General Assembly, and for all officers elected by the people."

The only classes of voters excluded by said constitution from exercising the right of franchise were:

1. Certain designated officers, soldiers, seamen or marines.
2. Idiots and lunatics.
3. Persons convicted of bribery in elections, embesslement of public funds, treason, felony or petty larceny.
4. Persons who had fought a duel, or sent or accepted a challenge, &c.

The Congress of the United States, by an act passed January 26, 1870 (16 U. S. Stat. at Large, p. 62), after a debate upon said proposed constitution, allowed Virginia to resume her relations to the United States, and to send representatives to Congress under said constitution, upon certain fundamental conditions, among which was the following:

"That the constitution of Virginia shall never be so amended or changed as to deprive any citizen, or class of citizens of the United States, of the right to vote, who are now entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law."

And, subject to said conditions which she expressly accepted, under which she has acted for over thirty years, and which she is now estopped from denying or questioning, the State of Vir-
6 ginia was permitted to resume her relations to the United States and to exercise all her ancient sovereign rights, save as they were curtailed, surrendered and limited by her assent to the fundamental conditions aforesaid.

Fifth. Said constitution of Virginia, adopted in 1869, provides, among other things, as follows:

"Article XII. Future changes in the constitution.

"SEC. 2. At the general election, to be held in the year 1888, and in each twentieth year thereafter, and also at such time as the General Assembly may by law provide, the question, 'Shall there be a convention to revise the constitution and amend the same?' shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors voting at such election shall decide in favor of a convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such convention: Provided, that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage, or any civil or political right as conferred

by this constitution, except for causes which apply to all persons and classes without distinction."

Sixth. Petitioners having freedom and the right of suffrage guaranteed to them by the XIIIth, XIVth and XVth amendments to the Constitution of the United States; by the fundamental conditions of the act of Congress of January 26, 1870; by the constitution of Virginia, adopted in 1869, and by the law of Virginia of 1881, above cited, have hitherto continuously enjoyed said franchise uninterruptedly, until November 4th, 1902. They can read and write, are
7 owners of real and personal property in Virginia, have a visible permanent interest in, and identity with, the State, in which they were born, or have resided the greater portion of their lives.

Seventh. In the year 1900 a political party called the Democratic party held complete control of the executive and judicial offices of Virginia and a large majority in both branches of the legislative department. Being so in control, the Democratic majority of the General Assembly passed an act, approved March 5th, 1900, submitting to the people of Virginia the question, "Shall there be a convention to revise the constitution and amend the same?" at a general election, to be held upon the fourth Thursday in May, 1900.

Eighth. Petitioners aver that, in every method and by all the representative utterances through which political parties give pledges, the Democratic party of Virginia assured the voters of Virginia, that if they voted in favor of said convention any revised and amended constitution which might be framed thereby would be submitted to the voters of Virginia for ratification or rejection. And they verily believe and charge that a vast majority of those who voted in favor of said convention were induced thereto by these assurances given by every representative politician, by the press and by party conventions of all political parties in the State.

Ninth. At the election held in May, 1900, the popular vote favored said convention, and was duly certified to the next General Assembly, which passed an act February 16, 1901, reciting that it was then proper to *rpo*vide plans for the selection of the delegates to such convention, for the convening of said delegates and the organization of the State convention, and for submitting the revised and amended constitution to the people of the State of Virginia for ratification or rejection.

8 Provision was made by said act for electing delegates to said convention on the fourth Thursday in May, 1901, and for the assembling of the convention June 12, 1901, and the act further provided that, if the convention completed its work before October 5, 1901, the constitution framed by it should be submitted to the qualified voters of the Commonwealth as a whole, or by separate articles or sections, as the convention might determine, for the ratification, or rejection, at the general election, to be held November 5, 1901; and that if the work of said convention was not finished

before October 5, 1901, it should remain for the next General Assembly to enact such measures as it should deem proper, for submitting the said constitution to the people of the State for ratification or rejection.

Tenth. Said convention assembled June 12, 1901, and pretended to organize; but a majority of the delegates elected thereto then and there refused to take or subscribe any oath of office, in violation of art. III., sec. 5, of the constitution of Virginia; and no member of said convention ever qualified as such.

Whereby, as petitioners insist and charge, all the proceedings of said convention were null, void and of no effect.

Eleventh. Nevertheless, said convention did attempt to act, and remained in session until June 26, 1902, when it adjourned *sine die*, after pretending to ordain a constitution consisting of 65 pages of printed matter, 8 pages of schedules and 24 pages of registration ordinances, all which are hereto annexed as part hereof, marked Exhibits A, B and C.

Twelfth. Notwithstanding the political pledge above referred to, and the requirements of the act of assembly aforesaid, that the work of said convention should be submitted to the voters of Vir-
9 ginia for ratification or rejection, a bare majority of a quorum of said convention, consisting exclusively of Democrats, refused to submit the said proposed revision and amendment of the constitution to the people of Virginia, or to leave the manner of its submission for ratification or rejection to the next General Assembly of the State.

The proposition to submit the amended and revised constitution to the electorate as constituted under the laws theretofore in force, was rejected by a vote of ayes, 33; noes, 52.

The proposition to submit it to the electorate provided for in said revision and amended constitution was rejected—ayes, 24; noes, 58.

And the proposition, "Shall the constitution framed by this body be ordained by this convention?" was sustained by a vote of ayes, 47; noes, 38.

The affirmative vote by which this outrage was perpetrated was less that a majority of the whole convention.

Forth-seven members attempted, in violation of every pledge given by their party, without any constitutional or statutory authority to act definitively, in defiance of the law under which they were assembled; to impose upon the voters of Virginia as the organic law of the State a constitution embodying many subjects never theretofore embraced in any constitution of Virginia; never submitted to the voters of Virginia for their approval; and framed and intended to disfranchise two-fifths of the voters who elected the delegates to the convention, or as many as the appointed agents of said dominant faction should thereafter see fit to deprive of suffrage.

Thirteenth. The design last referred to is manifest in sundry devices inserted in said constitution under pretence of guarding the electoral franchise as follows:

10 Under the constitution and laws of Virginia, as they existed when said convention was assembled, every lawful voter of Virginia, that is to say, every male citizen of the United States, twenty-one years of age, who had been a resident of the State of Virginia twelve months, and of the county or town in which he offered to vote three months next preceding any election, was entitled to vote, provided he was duly registered.

The registration laws of the State of Virginia then in force provided for a registrar in every election district of all the counties and cities of the State, who held his office for a fixed term, which had not expired when said convention attempted to enact the unlawful measures hereinafter stated. Any voter of the Commonwealth might apply to said registrars for registration, and they were required annually, in May and October, to designate a time and place at which lawful voters might be registered.

Petitioners aver and charge that the dominant faction in said convention wilfully and deliberately planned to destroy the electorate fixed by the then existing constitution of Virginia, and to that end it attempted to repeal the registration law above named, without submitting such action to the people, and contrary to the powers of said convention.

After incorporating into the proposed constitution, as article I. thereof, a bill of rights, which is a mockery of the liberties recited, when contrasted with what follows it, said convention, under article II., headed, "Elective franchise and qualifications for office," attempted to define and fix the qualifications of electors. Pretending to give a vote to every male citizen of the United States, resident in Virginia, twenty-one years of age, said section increased the term of residence of voters in the State to two years, and
11 in the county, city or town to one year, and in the precinct where the citizen offers to vote to thirty days. To those primary qualifications it added requirements that such voters should be registered and should have paid a State tax. Superadded to these and annulling said pretended broad grant of franchise, was the requirement that there should be a new general registration in all the counties, cities and towns of the State during the years 1902 and 1903 at such times and in such manner as might be prescribed by an ordinance of said convention.

In violation of all precedent or authority, and contrary to law, the dominant faction in said convention thereupon, or shortly thereafter, passed an ordinance entitled, "To provide for the registration of voters under said constitution and prior to the year 1904," by the provisions of which registration was ordered, not in the voting districts, as provided by the laws of Virginia then in force, but in the several magisterial districts of every county, and in the wards of every city; thereby changing the territorial areas of registration districts and increasing the physical difficulties of registration.

It provided that said general registration should take place prior to the 15th day of October, 1902, and again prior to the 15th of October, 1903; that the registrars should consist of a board composed

of three citizens resident in such district or ward appointed by said convention; whereby it undertook to change the time for holding registrations, the appointive power and the number of registrars. It restricted said boards to registering any person who applied for registration, except those entitled to register under said constitution prior to January 1, 1904, and gave said boards power to administer oaths and examine under oath any applicants and witnesses;
12 to receive evidence and hear testimony touching qualifications for registration. It further made the act of the majority of the board the act of the board itself. It provided for the delivery of the list of persons so registered to the judges appointed at such precinct to conduct said election; and provided for the prosecution of any person examined by said boards, for perjury. It gave the right of appeal to a rejected voter to the county or corporation court, and thence to the supreme court of appeals, and after sundry other detailed provisions, in order to make more effectual the plans of disfranchisement settled upon by the dominant faction, it descended to the appointment of three designated individuals in every magisterial district of the counties and in every ward of the cities, in the Commonwealth of Virginia, who could be relied upon as partisans of said faction to carry out its plans, whereby none but the persons whom it intended should be registered and allowed to vote would be placed upon the registration lists in any magisterial district or ward of the State of Virginia.

With the machinery thus provided and registration exclusively under control of its appointees, the dominant faction in said convention enacted into the constitution itself that its appointees should only register such voters of Virginia as presented themselves to them and were citizens of the United States, having the qualifications of age and residence aforesaid, and possessing the following additional qualifications:

(1) Certain soldiers; (2) any son of such soldier; (3) owners of property, upon which, for the year next preceding that in which they offered to register they had paid at least one dollar of State taxes; (4) persons able to read any section of said constitution submitted to them by said officers of registration and to give a
13 reasonable explanation of the same; or, if unable to read such section, were able to understand and give a reasonable explanation thereof when read to them by the officers.

Fourteenth. Petitioners aver and charge that the language aforesaid, purporting that every male citizen of the United States, as provided in the constitution of 1869 and required by the fundamental conditions of the act of Congress, should be admitted to register was a mere pretense of granting the right to register, coupled, as it was, with the proviso that such right should only exist when the applicant possessed the other qualifications last hereinbefore named. The act of Congress hereinabove cited expressly forebade the curtailment of the right of suffrage in that manner. So, also, do the XIVth and the XVth amendments to the Constitution of the United States. So, also, does the constitution of Virginia of 1869,

and the laws enacted pursuant thereto. The first and second conditions aforesaid were plainly obnoxious to that clause of the bill of rights which forbids the granting of separate privileges to any man, or set of men, or granting privileges as descendible for service of an ancestor.

The third condition, relating to the ownership of property on which taxes had been paid for the preceding year, was likewise unconstitutional and void.

The fourth proviso, whereby the right of any citizen to exercise his franchise in Virginia was made dependent upon the judgment or caprice of partisan appointees, violated every idea of democratic constitutional liberty.

The autocrat of the Russian empire has no more absolute mastery over the sources or political power in his empire, and is no more potent to control the membership and organization of every representative body in his realm, or the incumbency of every office in his dominion in perpetuity, than has the dominant faction
14 of said convention in Virginia, if said ordinance and constitution are valid.

Fifteenth. The schedule by which it was sought to put said pretended constitution into effect provided that certain lawful electoral boards existing in Virginia prior to the convening of the said convention, and to which electoral boards the appointment of judges of election and registrars was delegated, should remain in office until March 1, 1904, with the powers conferred by existing laws, except the appointment of registrars.

Said schedule further provided that, in all elections held after said pretended constitution went into effect, the qualifications of electors should be those required by the article II. of said pretended constitution therein set forth.

It further provided that said constitution should go into effect on the 10th day of July, 1902, at noon, and directed the governor of Virginia to immediately issue his proclamation, announcing that said revised and amended constitution had been ordained by the people of Virginia, assembled in convention, through their representatives, as the constitution for the government of the people of the State, and that it would go into effect as such, subject to the provisions of said schedule, on the 10th day of July, 1902 / and to call upon the people of Virginia to render their true and loyal support to the same as the organic law of the Commonwealth.

It required that when the General Assembly convened on the 15th day of July, 1902, as it had been summoned to convene, its members and officers, before entering upon the discharge of their duties, should severally take and subscribe the oath or affirmation prescribed by section 34 of said constitution, which was an oath to support the Constitution of the United States and the constitution of the State of Virginia, ordained by the convention which
15 assembled in the city of Richmond on the 12th day of June, 1901.

It is further required that the governor of Virginia, and all other executive officers of the State, whose offices are at the seat of government, and all judges of courts of record, should severally take and subscribe such oath or affirmation, under a penalty of vacation of their offices.

Sixteenth. Petitioners are advised and charge that the governor of Virginia, did forth-with make proclamation as directed by said schedule, and that the governor of Virginia, Andrew J. Montague, and all the other executive officers of the State, whose offices are at the seat of government, and all the judges of the courts of record, took and prescribed the oath required by said schedule, whereby they undertook to support the said alleged constitution; and that the members of the General Assembly, when it assembled on the 15th day of July, 1902, with one or two exceptions, took and subscribed said oath.

Seventeenth. Petitioners aver and charge that the passage of said ordinance creating said boards of registration; the appointments by said convention of the individuals composing said registration boards; the attempted additional qualifications upon the right of suffrage set forth in article II. section 19, of said pretended constitution, and especially said fourth qualification; and the attempt to ordain and proclaim said constitution without submitting it to the people of the State; are each, all and every one of them in violation of the rights of petitioners, destructive of their franchises, ruinous to their property as placing them subject to the control of a spurious and false electorate; in violation of the XIVth and XVth amendments of the Constitution of the United States; in violation of the acts of Congress of January 26, 1870; and in violation of the
16 only existing constitution of Virginia, which was ratified by the people of Virginia July 6th, 1869, and the laws enacted pursuant thereto; and that each, all and every one of said attempted acts, ordinances, appointments, constitution and schedule are null, void and of no effect.

Eighteenth. Petitioners aver and charge that by means of the premises the governor of Virginia, and all other executive officers of the State, the judges of the courts of said State, and the members of the General Assembly of said State, have untied in an attempt to abandon the government of Virginia under which they were elected to office, and that they, and each of them, have, in violation of their duties to the people who elected them, and in conspiracy with the dominant faction in said convention, attempted to ordain and proclaim said constitution and to impose the same upon the people of Virginia as the organic law of Virginia, without their consent, contrary to their will, without giving the people any opportunity to ratify or reject the same; well knowing or believing that the people would never ratify the same; and that all said actings and doings are in violation of the Constitution and laws of the United States and of the State of Virginia. And that each, all and every one of said pretended ordinances, constitution, schedule and proclamations,

and every and all acts done by them, or any of them, under color and pretence of said proceedings, are null, void and of no effect.

Nineteenth. They further aver and charge, and, if permitted to do so, will prove that many of the members of said convention, who voted in favor of ordaining and proclaiming said constitution, avowed a purpose, in framing the same, to disfranchise the great body of the colored voters of Virginia; and that however cunningly the
17 device contained in said instrument may be concealed, the real purpose of the dominant faction which framed, ordained and promulgated said so-called constitution, and of those who have co-operated in the attempt to proclaim and enforce the same, and the effect of said ordinance, constitution and schedule, as the same have been proclaimed, and are attempted to be enforced, has been, and is, to disfranchise the great mass of the colored voters of Virginia, to which class petitioners belong, on account of their race and color; and that said ordinance, constitution and schedule in no material way materially affect injuriously the white men of said State.

Twentieth. They further aver and charge, and, if permitted to do so will prove, that many members of the dominant faction in said convention, who voted in favor of ordaining and proclaiming said so-called ordinance, constitution and schedule, openly admit and declare that they knew said constitution would never be ratified and approved by a majority of the voters of Virginia under the electorate existing when said convention was called, if submitted to them for ratification or rejection; and that, in voting to ordain and proclaim the same, they did so, well knowing that by that means alone, if at all, could said constitution be imposed upon the people of Virginia as the organic law of the State.

Twent*h*-first. Petitioners are further advised and charge that the government of Virginia having passed, by the methods above recited, from under the lawful constitution adopted by the people in the year 1869, to a government under said so-called constitution, the government now existing in Virginia is unlawful, notwithstanding many of the incumbents of office therein were lawfully elected to the offices which they hold.

Twenty-second. After the governor of Virginia had proclaimed said constitution, and the other executive officers and *and*
18 judges of courts of record, and members of the General Assembly, had attorned to said so-called new constitution, as hereinabove set forth, the registration boards appointed by the ordinance of said convention, held their sessions and made up their enrollments in the various magisterial districts and wards of the Commonwealth. Petitioners aver and charge, and, if permitted to do so, will prove, that in every section of the State of Virginia the action of said registration boards was as partisan and unconstitutional and outrageous as might have been expected under the circumstances of their appointment; that said boards hastened in many sections of the Commonwealth to place upon said registration rolls the names of every white male citizen of the United States possessing the qualifications of age and residence, and who was believed to be a Dem-

ocrat; that the said boards made little or no effort to ask such white persons to read any section of said constitution, or to give a reasonable explanation of the same, but quickly and cheerfully admitted all such to register; that said boards, on the contrary, only permitted colored voters to apply for registration at stated times and places, and that when such colored persons presented themselves said boards proceeded at once to ask complicated, difficult and unnecessary questions, and that even in cases where such questions were answered intelligently, applicants for registration were rejected by said boards, they holding that the answers and explanations given to them were not reasonable; and petitioners aver and charge that, by means of the premises, thousands of lawfully-qualified citizens of Virginia, who applied for registration to said registration boards, have been rejected by them, and that many other thousands of lawful voters either refused to recognize said boards as law-
19 fully convened, or were deterred from applying to them by their notoriously partisan and arbitrary conduct.

Twenty-third. Petitioner, Wm. H. Jones, is a colored man, thirty-two years old; was born in Richmond, Virginia, where he has resided all his life, and now resided; has been a lawful voter under the constitution of 1869 for nine years; can read and write, and is owner of real estate in Richmond, Virginia, valued at about $800, on which he pays taxes; is in business as collector of the American Insurance Company and the Richmond Planet newspaper. Petitioner applied to the registration board of Jackson ward, in Richmond, Virginia, for registration in the latter part of September, and was refused registration, either on the understanding clause or as a property owner, although he has committed no offence, and is entitled to vote.

Petitioner, John Hill, is a colored man thirty-eight years old; was born, and has lived all his life, in Richmond, Virginia, and has been a lawful voter for about fifteen years. He can read and write, and owns an interest in, and pays taxes upon, real estate valued at about $500.00; is canvassing agent for the Cable piano, of Richmond, Virginia. He was a qualified voter at the election for delegates to said convention; applied to board of registration in Clay ward, where he lives, about September 26th, 1902, and was refused on ground of not understanding the constitution.

Petitioner Edgar Poe Lee, is a colored man, aged forty-three; born in Virginia; lived in Virginia all his life, except five years, from 1881 to 1886, when he was a private in the United States Army, in "F" Co., 9th U. S. cavalry; served in Arizona, California, New Mexico and Colorado, against the hostile Indians, and has his honorable discharge. Since discharge, in 1886, *and* has resided in Richmond, Virginia. Can read and write. Is a music teacher
20 and leader of a band of musicians. Regular occupation laborer. Applied for registration to the registration board in Jackson ward about September 30th, 1902. Was rejected by the board for reasons best known to themselves. Has been voting in Jackson ward since 1889.

Twenty-fourth. Whereby, as petitioners aver and charge the registration lists made up by same registration boards appointed by the said convention became, and were and are, not only the unlawful registration lists of the congressional electorate of Virginia, but are, as they were intended to be by the faction which designated said registration boards, merely partisan partial lists of such persons of the lawful electorate, as the appointees of said convention saw fit to enroll, exclusive of lawful electors of Virginia to the number of at least — in the State and — in this congressional district.

Twenty-fifth. Under the laws passed by the Congress of the United States, enacted by the State of Virginia prior to the assembling of said convention, an election for Congressmen from the ten congressional districts of Virginia should have been held in the State of Virginia Tuesday, November the 4th, 1902. By reason of the unlawful combination aforesaid between the incumbents of the offices in Virginia, and the dominant faction in said convention, and its appointees, no such election was held. Writs of election were indeed issued by the governor of Virginia in the form prescribed by law; but in taking such action he assumed to act under the Constitution unlawfully proclaimed by him as aforesaid. Judges of election at the several voting precincts of the State of Virginia were indeed appointed for said election, but the electoral boards and judges aforesaid did not take the oath to support the lawful constitution of Virginia, and only took the oath to support said spurious constitution; and whatever color of authority said election boards and judges
21 may have had, by reason of the electoral boa-ds having been selected prior to the attempted proclamation of said constitution, said attempted elections were null, void and of no effect, for the further reason that the lawfully registered voters of the Commonwealth were denied the right of suffrage of said election, and the lawful registration lists existing in every election precinct of the State were ignored and excluded at said elections, while, on the contrary, the only registration lists referred to or admitted by said judges upon which alone voters were permitted to vote, were spurious and unlawful registration lists made up by the illegal and partisan registration boards designated by the ordinance of said convention; whereby said elections for representatives in Congress were conducted in violation of the laws of the State of Virginia in all respects; without the registration lists required by law; without the officers conducting same having taken the oath required by law; and were and are in all respects null, void and of no effect.

Twenty-sixth. At said election the candidates for Congress in the third congressional district aforesaid were as follows: John Lamb was the candidate of the Democratic party, and William E. Talley and B. W. Edwards were candidates of the Republican party. The votes cast at said pretended election, in said district, were never published, but whatever they may be, it was a foregone conclusion before said illegal election was held, that said Democratic candidate would receive a very large vote, and said Republican candidate

would receive a very small vote, because, by the partisan and unlawful methods by which the registration lists were made up, upon which alone voters were permitted to vote, it was certain that substantially all the Democratic voters in the district who applied for registration would be placed upon said list, and that just as many Republican voters would be excluded therefrom as the partisan registration boards saw fit to exclude.

22 Twenty-seventh. Under the laws of Virginia, enacted prior to the convening of said convention, and still recognized as in force by the schedule of said constitution, the governor of Virginia, the secretary of the Commonwealth, the auditor of public accounts, the State treasurer and attorney-general, or any three of them, are constituted a board of State canvassers. The present incumbents of these offices are as follows—to-wit:

Andrew J. Montague is the governor of the State of Virginia; David Q. Eggleston is secretary of the Commonwealth; Morton Marye is auditor of public accounts; Asher W. Harman, Jr., is State treasurer, and Wm. A. Anderson is attorney-general.

After an election the judges of each voting precinct are required by law to make up the returns of the vote cast in their respective precincts, and transmit them to the clerk of the court of the county or corporation in which the election is held. The electoral board of each county and city, when it appoints election judges, designates five of the persons appointed to act as commissioners, who, or any three of whom, constitute a board, of which the clerk of the county, corporation or hustings court is *ex-officio* clerk. These commissioners meet at the clerk's office of their respective counties or corporations on the second day (which in this case is Thursday, November 6th) after the election and pass upon the returns made at the clerk's office; said commissioners ascertain from the returns the persons who have received the greatest number of votes in the county or corporation of the several offices to be filled at said election. The clerk is required to make out abstracts of the votes, and said abstracts certified and signed by said commissioners and attested by the clerk, are deposited in the clerk's office, and certified

23 copies thereof, under the official seal of the clerk, are transmitted to the secretary of the Commonwealth.

In case of elections for representatives in Congress, the secretary of the Commonwealth, upon receipt of the certified abstracts of the votes given in the several counties and corporations constituting a congressional district, is required to proceed to open the same and record them in a suitable book, and to preserve in his office said abstracts for the purpose of canvassing the results of elections.

Said board of State canvassers is required to meet at the office of the secretary of the Commonwealth on the fourth Monday in November after the election (which, in the present year, is Monday, November the 24th) when, upon the certified abstracts on file in the office of the secretary of the Commonwealth, it is required to proceed to examine and make statement of the whole number of votes given at such election for representatives in Congress, which state-

ment shall show the names of persons for whom such votes have been given for said office, and the whole number given to each, distinguishing the several districts, cities and counties in which they were given; it is also required to certify the said statement to be correct and the members of said board must subscribe their names thereto, and said board is required to thereupon determine what persons have been, by the greatest number of votes, duly elected Congressmen from the ten several congressional districts of Virginia, and to endorse and subscribe on such statements a certificate of such determination, and deliver them to the secretary of the Commonwealth. The secretary of the Commonwealth is required to record in a suitable book each certified statement or determination as made by the board of State canvassers, and without delay make out and transmit to each of the persons thereby declared to be elected
24 a certificate of his election certified by him under his seal of office.

Twenty-eighth. Petitioners aver and charge that each, all and every one of the proceedings had and taken by the governor of Virginia, the secretary of the Commonwealth, the several electoral boards in the State of Virginia, the judges and clerks of election, and all the other officers, to whom duties concern- election are committed by the laws of Virginia, have, in so far as they relate to the election required by law to be held in the State of Virginia November 4th, 1902, for representatives in Congress of the United States, been null, void and of no effect; that each, all and every one of said proceedings have been contrary to law, in violation of complainants' rights, and unconstitutional, and that no election for representatives in Congress was held in the State of Virginia November 4th, 1902.

Twenty-ninth. Nevertheless, petitioners are advised that the judges of election appointed in and for the several election precincts in the third congressional district of Virginia did pretend to hold such an election November 4th, 1902, using only said spurious registration lists at said election; that said precinct judges did certify to the clerks of their respective counties the votes which were cast thereat on the day aforesaid; that the board of canvassers in the several counties and cities in said third congressional district did assemble at their respective court-houses upon the 6th day of November, 1902, and did certify abstracts of the votes cast in their counties and cities, respectively, to the secretary of the Commonwealth at Richmond, Virginia, and that said board of State canvassers will assemble at the capital upon the 24th day of November, 1902, and will then and there, unless prohibited from doing so, proceed to treat said pretended election returns, as if they were the returns
25 of a lawful election; and will, from the spurious certified abstracts on file in the office of the secretary of the Commonwealth, proceed to examine and make up statements of the whole number of votes given at said spurious election for representatives in Congress, and to certify such statements to be correct, and to subscribe their named thereto, and to determine what persons were, by

the greatest number of votes, duly elected to such offices, and to endorse and subscribe on such statement a certificate of such determination and to deliver them to the secretary of the Commonwealth; and that said secretary of the Commonwealth will, unless prohibited from so doing, *will* record said certified statement of determination, and will without delay make out and transmit to each of the persons thereby declared to be elected, a false and spurious certificate of his election as a representative in Congress, certified by him under his seal of office.

Thirtieth. Petitioners aver and charge that such action on the part of said board of State canvassers would inflict upon petitioners, and each of them, great and irreparable injury; that the injury to them is great because the action of said board of State canvassers, if permitted to be taken, will give effect to void and invalid enactments, proclamations and proceedings as laws which control and govern the persons and properties, liberties, franchises and immunities of petitioners, notwithstanding said enactments, proclamations and proceedings have never been, and are not, valid or binding upon complainants, or upon any citizen of Virginia as laws of said Commonwealth. That said injury is irreparable, because it is of such a character that, unless it is prohibited, it can never be repaired. Complainants are freemen and voters in their respective communities, and the damage done to them in their persons and property by these spurious and invalid proceedings, which deprive them of their franchises, take away liberty guaranteed to
26 them by the Constitution of the United States and the laws of Congress, and deprive them of all voice in the Government which taxes them, is an injury which is irreparable and intolerable, even if it should be permitted to exist but for a single minute.

Thirty-one. Petitioners aver that the plain official duty of said board of State canvassers was, and is, to receive, consider, canvass and certify, only returns of elections held pursuant to the provisions of the constitution of Virginia, which was ratified by the people of Virginia, July 6th, 1869, and approved by Congress as aforesaid, or the laws of Virginia enacted pursuant thereto, especially those relating to suffrage and registration, and none others; and that any attempt on the part of the State board of canvassers to recognize as valid, consider, canvass or certify returns of any election held under any other law or laws, especially under ordinances, constitutions, schedules, or proclamations of an alleged convention of Virginia which assembled at Richmond, June 12th, 1901, is a positive official act plainly violating the oath of office, and official duty, of the members of said board, and is part and parcel of a conspiracy combination arbitrarily, capriciously and unlawfully entered into as aforesaid between the members of said board, and the faction attempting to enact, ordain and proclaim said ordinances, constitution and schedule, to overthrow the government of Virginia, transcend the jurisdiction of said board, is "*ultra vires*," null and void. That such action is designed to, and does, oppress petitioners and deprive them of their franchises as voters, their right to representation in the Con-

gress of the United States, abridges their privileges and immunities as citizens of the United States in the State of Virginia, deprives them of their liberty and property, without due process of the
27 law, denies them the equal protection of the laws, and denies and abridges to them, as citizens of the United States, the right to vote in the State of Virginia, on account of their race, color, or previous condition of servitude.

And petitioners aver and charge that said board of canvassers and the several members thereof will, unless they shall be prohibited from so doing, meet upon the 24th day of November, 1902, at Richmond, Virginia, and commit the acts last hereinabove set forth, as threatened by them, in violation of law, in excess of their jurisdiction, and to the irreparable injury of the liberty, franchises, privileges, immunities and property of petitioners.

Wherefore, your petitioners pray that this honorable court will issue, or cause to be issued, a writ of prohibition, directed to and against said Andrew J. Montague, who is governor of Virginia; David Q. Eggleston, who is secretary of the Commonwealth of Virginia; Morton Marye, who is auditor of public accounts of Virginia; Asher W. Harman, Jr., who is State treasurer of Virginia; and Wm. A. Anderson, who is attorney-general of Virginia, constituting the board of State canvassers of Virginia, prohibiting them, and each of them, from considering, canvassing, counting, determining upon, or certifying or otherwise acting upon, any returns or abstracts of returns in the office of the secretary of the Commonwealth of Virginia, purporting to be returns of election held in the State of Virginia, Tuesday, November 4th, 1902, for representatives in Congress from the State of Virginia, or in any wise dealing with or certifying the results of said returns as returns of a lawful election, held in Virginia on the date aforesaid. That by reason of the matters and things hereinabove set forth, said pretended election, and any and all precinct, county, district or State returns made
28 thereunder, may be held to be null, void and of no effect, and the said board of State canvassers, and the members thereof, may be prohibited from in any wise proceeding to act upon the same as lawfully before them for their consideration.

That pending the hearing, and until the final decision upon this petition for said writ of prohibition an order may be granted by this honorable court suspending any and all proceedings, on the part of said board of State canvassers and the members thereof upon any and all the matters sought to be prohibited until the final decision of this cause. And for such other and further orders in the premises as shall and may make the prayer of your petitioners effectual.

And petitioners will ever pray, &c.

WILLIAM H. JONES.
JOHN HILL.
EDGAR POE LEE.

STATE OF VIRGINIA, *City of Richmond,* } *To-wit:*

This day personally appeared before me, the undersigned, deputy clerk United States circuit court for the eastern district of Virginia, William H. Jones, John Hill and Edgar Poe Lee, whose names are signed to aforegoing petition, bearing date 14th day of November, 1902, who, being by me duly sworn, made oath that the facts set forth in such petition, so far as stated as of their own knowledge are true, and so far as the same are stated upon knowledge derived from others, they believe them to be true.

Witness my hand and official seal this 14th day of November, 1902.

[SEAL.]

JOSEPH P. BRADY,
Deputy Clerk U. S. Circuit Court,
Eastern District of Virginia.

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THE

CONSTITUTION

OF THE

STATE OF VIRGINIA,

ADOPTED BY THE

CONVENTION OF 1901-2.

PUBLISHED BY AUTHORITY.

RICHMOND:

1902.

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CONSTITUTION OF VIRGINIA.

Whereas, pursuant to an act of the General Assembly of Virginia, approved March the fifth, in the year of our Lord nineteen hundred, the question, "shall there be a convention to revise the Constitution and amend the same?" was submitted to the electors of the State of Virginia, qualified to vote for members of the General Assembly, at an election held throughout the State on the fourth Thursday in May, in the year nineteen hundred, at which election a majority of the electors so qualified voting at said election did decide in favor of a convention for such purpose; and,

Whereas, the General Assembly at its next session did provide by law for the election of delegates to such convention, in pursuance whereof the members of this convention were elected by the good people of Virginia, to meet in convention for such purpose.

We, therefore, the people of Virginia, so assembled in Convention through our representatives, with gratitude to God for His past favors, and invoking His blessings upon the result of our deliberations, do ordain and establish the following revised and amended Constitution for the government of the Commonwealth:

ARTICLE I.

BILL OF RIGHTS.

A DECLARATION OF RIGHTS, made by the representatives of the good people of Virginia assembled in full and free Convention; which rights do pertain to them and their posterity, as the Basis and Foundation of Government.

Section 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity;

namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Sec. 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

Sec. 3. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

Sec. 4. That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge to be hereditary.

Sec. 5. That the legislative, executive, and judicial departments of the State should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Sec. 6. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Sec. 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Sec. 8. That no man shall be deprived of his life, or liberty, except by the law of the land, or the judgment of his peers; nor shall any man be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offence, but an appeal may be

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allowed to the Commonwealth in all prosecutions for the violation of a law relating to the state revenue.

That in all criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; provided, however, that in any criminal case, upon a plea of guilty, tendered in person by the accused, and with the consent of the attorney for the Commonwealth, entered of record, the court shall, and in a prosecution for an offence not punishable by death, or confinement in the penitentiary, upon a plea of not guilty, with the consent of the accused, given in person, and of the attorney for the Commonwealth, both entered of record, the court, in its discretion, may hear and determine the case, without the intervention of a jury; and, that the General Assembly may provide for the trial of offences not punishable by death, or confinement in the penitentiary, by a justice of the peace, without a jury, preserving in all such cases, the right of the accused to an appeal to and trial by jury in the circuit or corporation court; and may also provide for juries consisting of less than twelve, but not less than five, for the trial of offences not punishable by death, or confinement in the penitentiary, and may classify such cases, and prescribe the number of jurors for each class.

Sec. 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Sec. 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Sec. 11. That no person shall be deprived of his property without due process of law; and in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred; but the General Assembly may limit the number of jurors for civil cases in circuit and corporation courts to not less than five in cases now cognizable by justices of the peace, or to not less than seven in cases not so cognizable.

Sec. 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments; and any citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.

Sec. 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Sec. 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Sec. 15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

Sec. 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.

Sec. 17. The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.

ARTICLE II.

ELECTIVE FRANCHISE AND QUALIFICATIONS FOR OFFICE.

Sec. 18. Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the county, city, or town one year, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his state poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.

Sec. 19. There shall be general registrations in the counties, cities and towns of the State during the years nineteen hundred and two and nineteen hundred and three at such times and in such manner as may be prescribed by an ordinance of this Convention. At such registrations every male citizen of the United States having the qualifications of age and

residence required in section Eighteen shall be entitled to register, if he be:

First. A person who, prior to the adoption of this Constitution, served in time of war in the army or navy of the United States, of the Confederate States, or of any state of the United States or of the Confederate States; or,

Second. A son of any such person; or,

Third. A person, who owns property, upon which, for the year next preceding that in which he offers to register, state taxes aggregating at least one dollar have been paid; or,

Fourth. A person able to read any section of this Constitution submitted to him by the officers of registration and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers.

A roll containing the names of all persons thus registered, sworn to and certified by the officers of registration, shall be filed, for record and preservation, in the clerk's office of the circuit court of the county, or the clerk's office of the corporation court of the city, as the case may be. Persons thus enrolled shall not be required to register again, unless they shall have ceased to be residents of the State, or become disqualified by section Twenty-three. Any person denied registration under this section shall have the right of appeal to the circuit court of his county, or the corporation court of his city, or to the judge thereof in vacation.

Sec. 20. After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section Eighteen, shall be entitled to register, provided:

First. That he has personally paid to the proper officer all state poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

Second. That, unless physically unable, he make application to register in his own hand-writing, without aid, suggestion, or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time and for the two years next preceding, and whether he has previously voted, and, if so, the state, county, and precinct in which he voted last; and,

Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the officers of registration, which questions, and his answers thereto, shall be reduced to writing, certified by the said officers, and preserved as a part of their official records.

Sec. 21. Any person registered under either of the last two sections, shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions:

That he, unless exempted by section Twenty-two, shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, personally pay, at least six months prior to the election, all state poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote; provided that, if he register after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe; but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.

Sec. 22. No person who, during the late war between the States, served in the army or navy of the United States, or the Confederate States, or any state of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the state poll tax assessed against any one shall not be enforced by legal process until the same has become three years past due.

Sec. 23. The following persons shall be excluded from registering and voting: Idiots, insane persons, and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretences, embezzlement, forgery, or perjury; persons who, while citizens of this State, after the adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel.

Sec. 24. No officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to the right of suffrage, in the State, or in any county, city or town thereof, by reason of being stationed therein; nor shall an inmate of any charitable institu-

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tion or a student in any institution of learning, be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution.

Sec. 25. The General Assembly shall provide for the annual registration of voters under section Twenty, for an appeal by any person denied registration, for the correction of illegal or fraudulent registration, thereunder, and also for the proper transfer of all voters registered under this Constitution.

Sec. 26. Any person who, in respect to age or residence, would be qualified to vote at the next election, shall be admitted to registration, notwithstanding that at the time thereof he is not so qualified, and shall be entitled to vote at said election if then qualified under the provisions of this Constitution.

Sec. 27. All elections by the people shall be by ballot; all elections by any representative body shall be *viva voce*, and the vote recorded in the journal thereof.

The ballot-box shall be kept in public view during all elections, and shall not be opened, nor the ballots canvassed or counted, in secret.

So far as consistent with the provisions of this Constitution, the absolute secrecy of the ballot shall be maintained.

Sec. 28. The General Assembly shall provide for ballots without any distinguishing mark or symbol, for use in all state, county, city, and other elections by the people, and the form thereof shall be the same in all places where any such election is held. All ballots shall contain the names of the candidates, and of the offices to be filled, in clear print and in due and orderly succession; but any voter may erase any name and insert another.

Sec. 29. No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

Sec. 30. The General Assembly may prescribe a property qualification not exceeding two hundred and fifty dollars for voters in any county or subdivision thereof, or city or town, as a prerequisite for voting in any election for officers, other than the members of the General Assembly, to be wholly elected by the voters of such county or subdivision thereof, or city, or town; such action, if taken, to be had upon the initiative of a representative in the General Assembly of the county, city or town affected: provided, that the General Assembly in its discretion may make

such exemptions from the operation of said property qualification as shall not be in conflict with the Constitution of the United States.

Sec. 31. There shall be in each county and city an electoral board, composed of three members, appointed by the circuit court of the county or the corporation court of the city, or the judge of the court in vacation. Of those first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years; and thereafter their successors shall be appointed for the full term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term.

Each electoral board shall appoint the judges, clerks, and registrars of election for its county or city; and, in appointing judges of election, representation as far as possible shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and next highest number of votes.

No person, nor the deputy of any person, holding any office or post of profit or emolument, under the United States Government, or who is in the employment of such government, or holding any elective office of profit or trust in the State, or in any county, city, or town thereof, shall be appointed a member of the electoral board, or registrar, or judge of election.

Sec. 32. Every person qualified to vote shall be eligible to any office of the State, or of any county, city, town, or other subdivision of the State, wherein he resides, except as otherwise provided in this Constitution, and except that this provision as to residence shall not apply to any office elective by the people where the law provides otherwise. Men and women eighteen years of age shall be eligible to the office of notary public, and qualified to execute the bonds required of them in that capacity.

Sec. 33. The terms of all officers elected under this Constitution shall begin on the first day of February next succeeding their election, unless otherwise provided in this Constitution. All officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified.

Sec. 34. Members of the General Assembly and all officers, executive and judicial, elected or appointed after this Constitution goes into effect, shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Virginia ordained by the Convention which assembled in the city of Richmond on the twelfth day of June, nineteen hundred and one, and that I will faith-

fully and impartially discharge and perform all the duties incumbent on me as ————————, according to the best of my ability; so help me God."

Sec. 35. No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election.

Sec. 36. The General Assembly shall enact such laws as are necessary and proper for the purpose of securing the regularity and purity of general, local and primary elections, and preventing and punishing any corrupt practices in connection therewith; and shall have power, in addition to other penalties and punishments now or hereafter prescribed by law for such offences, to provide that persons convicted of them shall thereafter be disqualified from voting or holding office.

Sec. 37. The General Assembly may provide for the use, throughout the State or in any one or more counties, cities, or towns in any election, of machines for receiving, recording, and counting the votes cast thereat: provided, that the secrecy of the voting be not thereby impaired.

Sec. 38. After the first day of January, nineteen hundred and four, the treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or of the corporation court of his city, a list of all persons in his county or city, who have paid not later than six months prior to such election, the state poll taxes required by this Constitution during the three years next preceding that in which such election is held; which list shall be arranged alphabetically, by magisterial districts or wards, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county or city, to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting-places, and, within ten days from the receipt thereof, to make return on oath to the clerk, as to the places where and dates at which said copies were respectively posted; which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof, and also cause the list to be published in such other manner as may be prescribed by law; the original list returned by the treasurer shall be filed and preserved by the clerk among the public records of his office for at least five years after receiving the same. Within thirty days after the list has been so posted, any person who shall have paid his capitation tax,

but whose name is omitted from the certified list, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide.

The clerk shall deliver, or cause to be delivered, with the poll-books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Auditor of Public Accounts, who shall charge the amount of the poll taxes stated therein to such treasurer unless previously accounted for.

Further evidence of the prepayment of the capitation taxes required by this Constitution, as a prerequisite to the right to register and vote, may be prescribed by law.

ARTICLE III.

DIVISION OF POWERS.

Sec. 39. Except as hereinafter provided, the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Sec. 40. The legislative power of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates.

Sec. 41. The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts, on the Tuesday succeeding the first Monday in November.

Sec. 42. The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected bi-enni-

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ally by the voters of the several house districts, on the Tuesday succeeding the first Monday in November.

Sec. 43. The apportionment of the State into senatorial and house districts, made by the acts of the General Assembly, approved April the second, nineteen hundred and two, is hereby adopted; but a re-apportionment may be made in the year nineteen hundred and six, and shall be made in the year nineteen hundred and twelve, and every tenth year thereafter.

Sec. 44. Any person may be elected senator who, at the time of election, is actually a resident of the senatorial district and qualified to vote for members of the General Assembly; and any person may be elected a member of the House of Delegates who, at the time of election, is actually a resident of the house district and qualified to vote for members of the General Assembly. But no person holding a salaried office under the state government, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court, shall be a member of either house of the General Assembly during his continuance in office, and the election of any such person to either house of the General Assembly, and his qualification as a member thereof, shall vacate any such office held by him; and no person holding any office or post of profit or emolument under the United States Government or who is in the employment of such government, shall be eligible to either house. The removal of a senator or delegate from the district for which he is elected, shall vacate his office.

Sec. 45. The members of the General Assembly shall receive for their services a salary to be fixed by law and paid from the public treasury; but no act increasing such salary shall take effect until after the end of the term for which the members voting thereon were elected; and no member during the term for which he shall have been elected, shall be appointed or elected to any civil office of profit in the State except offices filled by election by the people.

Sec. 46. The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of the members of the House of Delegates and not oftener unless convened in the manner prescribed by this Constitution. No session of the General Assembly, after the first under this Constitution, shall continue longer than sixty days; but with the concurrence of three-fifths of the members elected to each house, the session may be extended for a period not exceeding thirty days. Except for the first session held under this Constitution, members shall be allowed a salary for not exceeding sixty days at

any regular session, and for not exceeding thirty days at any extra session. Neither house shall, without the consent of the other, adjourn to another place nor for more than three days. A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe.

Sec. 47. The House of Delegates shall choose its own speaker; and, in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor, the Senate shall choose from their own body a president *pro tempore*. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during the session of the General Assembly; but, if vacancies occur during the recess, such writs may be issued by the Governor, under such regulations as may be prescribed by law. Each house shall judge of the election, qualification, and returns of its members; may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Sec. 48. Members of the General Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned in any other place. They shall not be subject to arrest, under any civil process, during the sessions of the General Assembly, or the fifteen days next before the beginning or after the ending of any session.

Sec. 49. Each house shall keep a journal of its proceedings, which shall be published from time to time, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Sec. 50. No law shall be enacted except by bill. A bill may originate in either house, to be approved or rejected by the other, or may be amended by either, with the concurrence of the other.

No bill shall become a law unless, prior to its passage, it has been,

(a) Referred to a committee of each house, considered by such committee in session, and reported;

(b) Printed by the house, in which it originated, prior to its passage therein;

(c) Read at length on three different calendar days in each house; and unless,

(d) A yea and nay vote has been taken in each house upon its final passage, the names of the members voting for and against entered on the

journal, and a majority of those voting, which shall include at least two-fifths of the members elected to each house, recorded in the affirmative.

And only in the manner required in subdivision (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a commitee from the consideration of a bill and consider the same as if reported; provided that the printing and reading, or either, required in subdivisions (b) and (c) of this section, may be dispensed with in a bill to codify the laws of the State, and in any case of emergency by a vote of four-fifths of the members voting in each house taken by the yeas and nays, the names of the members voting for and against, entered on the journal; and provided further, that no bill which creates, or establishes a new office, or which creates, continues, or revives a debt or charge, or makes, continues or revives any appropriation of public or trust money, or property, or releases, discharges or commutes any claim or demand of the State, or which imposes, continues or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the vote to be by the yeas and nays, and the names of the members voting for and against, entered on the journal. Every law imposing, continuing or reviving a tax shall specifically state such tax and no law shall be construed as so stating such tax, which requires a reference to any other law or any other tax. The presiding officer of each house shall, in the presence of the house over which he presides, sign every bill that has been passed by both houses and duly enrolled. Immediately before this is done, all other business being suspended, the title of the bill shall be publicly read. The fact of signing shall be entered on the journal.

Sec. 51. There shall be a joint committee of the General Assembly, consisting of seven members appointed by the House of Delegates, and five members appointed by the Senate, which shall be a standing committee on special, private, and local legislation. Before reference to a committee, as provided by section Fifty, any special, private, or local bill introduced in either house shall be referred to and considered by such joint committee and returned to the house in which it originated with a statement in writing whether the object of the bill can be accomplished under general law or by court proceeding; whereupon, the bill, with the accompanying statement, shall take the course provided by section Fifty. The joint committee may be discharged from the consideration of a bill by the house in which it originated in the manner provided in section Fifty for the discharge of other committees.

Sec. 52. No law shall embrace more than one object, which shall be ex-

pressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.

Sec. 53. No law, except a general appropriation law, shall take effect until at least ninety days after the adjournment of the session of the General Assembly at which it is enacted, unless in case of an emergency (which emergency shall be expressed in the body of the bill), the General Assembly shall otherwise direct by a vote of four-fifths of the members voting in each house, such vote to be taken by the yeas and nays, and the names of the members voting for and against entered on the journal.

Sec. 54. The Governor, Lieutenant-Governor, Attorney-General, judges, members of the State Corporation Commission, and executive officers at the seat of government, and all officers appointed by the Governor or elected by the General Assembly, offending against the State by malfeasance in office, corruption, neglect of duty, or other high crime or misdemeanor, may be impeached by the House of Delegates, and prosecuted before the Senate which shall have the sole power to try impeachment. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the State; but the person convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the General Assembly for the trial of impeachments.

Sec. 55. The General Assembly shall by law apportion the State into districts, corresponding with the number of representatives to which it may be entitled in the House of Representatives of the Congress of the United States; which districts shall be composed of contiguous and compact territory containing, as nearly as practicable, an equal number of inhabitants.

Sec. 56. The manner of conducting and making returns of elections, of determining contested elections, and of filling vacancies in office, in cases not specially provided for by this Constitution, shall be prescribed by law, and the General Assembly may declare the cases in which any office shall be deemed vacant where no provision is made for that purpose in this Constitution.

Sec. 57. The General Assembly shall have power, by a two-thirds vote, to remove disabilities incurred under section Twenty-three, of Article Two, of this Constitution, with reference to duelling.

Sec. 58. The privilege of the writ of *habeas corpus* shall not be sus-

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pended unless when in cases of invasion or rebellion, the public safety may require. The General Assembly shall not pass any bill of attainder, or any *ex post facto* law, or any law impairing the obligation of contracts, or any law abridging the freedom of speech or of the press. It shall not enact any law whereby private property shall be taken or damaged for public uses, without just compensation. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Sec. 59. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

Sec. 60. No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery shall be prohibited.

Sec. 61. No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county be reduced in population below eight thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the General Assembly.

Sec. 62. The General Assembly shall have full power to enact local option or dispensary laws, or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors.

Sec. 63. The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sale of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction. The General Assembly may regulate the exercise by courts of the right to punish for con-

tempt. The General Assembly shall not enact any local, special, or private law in the following cases:

1. For the punishment of crime.

2. Providing a change of venue in civil or criminal cases.

3. Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before, the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments, or prescribing the effect of judicial sales of real estate.

4. Changing or locating county seats.

5. For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.

6. Extending the time for the assessment or collection of taxes.

7. Exempting property from taxation.

8. Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association, to the State or to any political subdivision thereof.

9. Refunding money lawfully paid into the treasury of the State or the treasury of any political subdivision thereof.

10. Granting from the treasury of the State, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.

11. For conducting elections or designating the places of voting.

12. Regulating labor, trade, mining or manufacturing, or the rate of interest on money.

13. Granting any pension or pensions.

14. Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.

15. Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.

16. Affecting or regulating fencing or the boundaries of land, or the running at large of stock.

17. Creating private corporations, or amending, renewing, or extending the charters thereof.

18. Granting to any private corporation, association, or individual any special or exclusive right, privilege or immunity.

19. Naming or changing the name of any private corporation or association.

20. Remitting the forfeiture of the charter of any private corporation

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except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

Sec. 64. In all the cases enumerated in the last section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of the enactment of a special, private, or local law.

No general or special law shall surrender or suspend the right and power of the State, or any political subdivision thereof, to tax corporations and corporate property, except as authorized by Article Thirteen. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall its operation be suspended for the benefit of any private corporation, association, or individual.

Sec. 65. The General Assembly may, by general laws, confer upon the boards of supervisors of counties, and the councils of cities and towns, such powers of local and special legislation, as it may from time to time deem expedient, not inconsistent with the limitations contained in this Constitution.

Sec. 66. The Clerk of the House of Delegates shall be Keeper of the Rolls of the State but shall receive no compensation from the State for his services as such.

The General Assembly by general law shall prescribe the number of employees of the Senate and House of Delegates, including the clerks thereof, and fix their compensation at a *per diem* for the time actually employed in the discharge of their duties.

Sec. 67. The General Assembly shall not make any appropriation of public funds, of personal property, or of any real estate, to any church, or sectarian society, association, or institution of any kind whatever, which is entirely or partly, directly or indirectly, controlled by any church or sectarian society; nor shall the General Assembly make any like appropriation to any charitable institution, which is not owned or controlled by the State; except that it may, in its discretion, make appropriations to non-sectarian institutions for the reform of youthful criminals; but nothing herein contained shall prohibit the General Assembly from authorizing counties, cities, or towns to make such appropriations to any charitable institution or association.

Sec. 68. The General Assembly shall, at each regular session, appoint a standing committee, consisting of two members of the Senate and three

members of the House of Delegates, which shall be known as the Auditing Committee. Such committee shall annually, or oftener in its discretion, examine the books and accounts of the First Auditor, the State Treasurer, the Secretary of the Commonwealth, and other executive officers at the seat of government whose duties pertain to auditing or accounting for the state revenue, report the result of its investigations to the Governor, and cause the same to be published in two newspapers of general circulation in the State. The Governor shall, at the beginning of each session, submit said reports to the General Assembly for appropriate action. The committee may sit during the recess of the General Assembly, receive such compensation as may be prescribed by law, and employ one or more accountants to assist in its investigations.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Sec. 69. The chief executive power of the State shall be vested in a Governor. He shall hold office for a term of four years, to commence on the first day of February next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

Sec. 70. The Governor shall be elected by the qualified voters of the State at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the Secretary of the Commonwealth, who shall deliver them to the Speaker of the House of Delegates on the first day of the next session of the General Assembly. The Speaker of the House of Delegates shall, within one week thereafter, in the presence of a majority of the Senate and of the House of Delegates, open the returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

Sec. 71. No person except a citizen of the United States shall be eligible to the office of Governor; and if such person be of foreign birth, he must have been a citizen of the United States for ten years next preceding his election; nor shall any person be eligible to that office unless he shall

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have attained the age of thirty years, and have been a resident of the State for five years next preceding his election.

Sec. 72. The Governor shall reside at the seat of government; shall receive five thousand dollars for each year of his service, and while in office shall receive no other emolument from this or any other government.

Sec. 73. The Governor shall take care that the laws be faithfully executed; communicate to the General Assembly, at every session, the condition of the State; recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the State may require. He shall be commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws; conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the recess of the General Assembly, shall have power to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government except the Lieutenant-Governor; but, in any case in which this power is so exercised, the Governor shall report to the General Assembly, at the beginning of the next session thereof, the fact of such suspension and the cause therefor, whereupon the General Assembly shall determine whether such officer shall be restored or finally removed; and the Governor shall have power, during the recess of the General Assembly, to appoint, *pro tempore*, successors to all officers so suspended, and to fill, *pro tempore*, vacancies in all offices of the State for the filling of which the Constitution and laws make no other provision; but his appointments to such vacancies shall be by commissions to expire at the end of thirty days after the commencement of the next session of the General Assembly. He shall have power to remit fines and penalties in such cases, and under such rules and regulations, as may be prescribed by law, and except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; to remove political disabilities consequent upon conviction for offences committed prior or subsequent to the adoption of this Constitution, and to commute capital punishment; but he shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Sec. 74. The Governor may require information in writing, under

oath, from the officers of the executive department and superintendents of state institutions upon any subject relating to the duties of their respective offices and institutions; and he may inspect at any time their official books, accounts and vouchers, and ascertain the condition of the public funds in their charge, and in that connection may employ accountants. He may require the opinion in writing of the Attorney-General upon any question of law affecting the official duties of the Governor.

Sec. 75. Commissions and grants shall run in the name of Commonwealth of Virginia, and be attested by the Governor, with the seal of the Commonwealth annexed.

Sec. 76. Every bill, which shall have passed the Senate and House of Delegates, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may return it with his objections to the house in which it originated, which shall enter the objections at large on its journal and proceed to reconsider the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members present, which two-thirds shall include a majority of the members elected to that house, it shall become a law, notwithstanding the objections. The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval. If he approve the general purpose of any bill, but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment, as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto: provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendations in relation thereto, or either house by such vote shall fail or refuse to so amend it, then, and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. But in all the cases above set forth the votes of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill, or item or items of an appropriation bill, shall be entered on the journal

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of each house. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall, by final adjournment, prevent such return; in which case it shall be a law if approved by the Governor in the manner and to the extent above provided, within ten days after such adjournment, but not otherwise.

Sec. 77. A Lieutenant-Governor shall be elected at the same time and for the same term as the Governor, and his qualifications and the manner and ascertainment of his election, in all respects, shall be the same.

Sec. 78. In case of the removal of the Governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant-Governor; and the General Assembly shall provide by law for the discharge of the executive functions in other necessary cases.

Sec. 79. The Lieutenant-Governor shall be president of the Senate, but shall have no vote except in case of an equal division; and while acting as such, shall receive a compensation equal to that allowed to the Speaker of the House of Delegates.

Sec. 80. A Secretary of the Commonwealth shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained as in the case of the Governor. He shall keep a daily record of the official acts of the Governor, which shall be signed by the Governor and attested by the Secretary, and, when required, he shall lay the same, and any papers, minutes and vouchers pertaining to his office, before either house of the General Assembly. He shall discharge such other duties as may be prescribed by law. All fees received by the Secretary of the Commonwealth shall be paid into the treasury monthly.

Sec. 81. A State Treasurer shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. His powers and duties shall be prescribed by law.

Sec. 82. An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of four years. His powers and duties shall be prescribed by law.

Sec. 83. The salary of each officer of the Executive Department, except in those cases where the salary is determined by this Constitution, shall be fixed by law; and the salary of no such officer shall be increased or diminished during the term for which he shall have been elected or appointed.

Sec. 84. The General Assembly shall provide by law for the establishment and maintenance of an efficient system of checks and balances between the officers at the seat of government entrusted with the collection, receipt, custody, or disbursement of the revenues of the State.

Sec. 85. All State officers, and their deputies, assistants or employees, charged with the collection, custody, handling or disbursement of public funds, shall be required to give bond for the faithful performance of such duties; the amount of such bond in each case, and the manner in which security shall be furnished, to be specified and regulated by law.

Sec. 86. The General Assembly shall have power to establish and maintain a Bureau of Labor and Statistics, under such regulations as may be prescribed by law.

ARTICLE VI.

JUDICIARY DEPARTMENT.

Sec. 87. The Judiciary Department shall consist of a Supreme Court of Appeals, circuit courts, city courts, and such other courts as are hereinafter authorized. The jurisdiction of these tribunals and the judges thereof, except so far as conferred by this Constitution, shall be regulated by law.

Sec. 88. The Supreme Court of Appeals shall consist of five judges, any three of whom may hold a court. It shall have original jurisdiction in cases of *habeas corpus, mandamus,* and prohibition; but in all other cases, in which it shall have jurisdiction, it shall have appellate jurisdiction only.

Subject to such reasonable rules, as may be prescribed by law, as to the course of appeal, the limitation as to time, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person; and it shall also have appellate jurisdiction in such other cases, within the limits hereinafter defined, as may be prescribed by law; but no appeal shall be allowed to the Commonwealth in any case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed by law in any case involving the violation of a law relating to the state revenue. No bond shall be required of any accused person as a condition of appeal, but a *supersedeas* bond may be required where the only punishment imposed in the court below is a fine.

The court shall not have jurisdiction in civil cases where the matter in

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controversy, exclusive of costs and of interest accrued since the judgment in the court below, is less in value or amount than three hundred dollars, except in controversies concerning the title to, or boundaries of land, the condemnation of property, the probate of a will, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, roadway, ferry, or landing, or the right of the State, county, or municipal corporation, to levy tolls or taxes, or involving the construction of any statute, ordinance or county proceeding imposing taxes; and, except in cases of *habeas corpus, mandamus,* and prohibition, the constitutionality of a law, or some other matter not merely pecuniary. After the year nineteen hundred and ten the General Assembly may change the jurisdiction of the court in matters merely pecuniary. The assent of at least three of the judges shall be required for the court to determine that any law is, or is not, repugnant to the Constitution of this State or of the United States; and if, in a case involving the constitutionality of any such law, not more than two of the judges sitting agree in opinion on the constitutional question involved, and the case cannot be determined, without passing on such question, no decision shall be rendered therein, but the case shall be reheard by a full court; and in no case where the jurisdiction of the court depends solely upon the fact that the constitutionality of a law is involved, shall the court decide the case upon its merits, unless the contention of the appellant upon the constitutional question be sustained. Whenever the requisite majority of the judges sitting are unable to agree upon a decision, the case shall be reheard by a full bench, and any vacancy caused by any one or more of the judges being unable, unwilling, or disqualified to sit, shall be temporarily filled in a manner to be prescribed by law.

Sec. 89. The General Assembly may, from time to time, provide for a Special Court of Appeals to try any cases on the docket of the Supreme Court of Appeals in respect to which a majority of the judges are so situated as to make it improper for them to sit; and also to try any cases on said docket which cannot be disposed of with convenient dispatch. The said special court shall be composed of not less than three nor more than five of the judges of the circuit courts and city courts of record in cities of the first class, or of the judges of either of said courts, or of any of the judges of said courts together with one or more of the judges of the Supreme Court of Appeals.

Sec. 90. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals the reasons therefor shall be stated in writing and preserved with the record of the case.

Sec. 91. The judges of the Supreme Court of Appeals shall be chosen

by the joint vote of the two houses of the General Assembly. They shall, when chosen, have held a judicial station in the United States, or shall have practiced law in this or some other state for five years. At the first election under this Constitution, the General Assembly shall elect the judges for terms of four, six, eight, ten, and twelve years respectively; and thereafter they shall be elected for terms of twelve years.

Sec. 92. The officers of the Supreme Court of Appeals shall be appointed by the court or by the judges in vacation. Their duties, compensation, and tenure of office shall be prescribed by law.

Sec. 93. The Supreme Court of Appeals shall hold its sessions at two or more places in the State, to be fixed by law.

Sec. 94. The State shall be divided into twenty-four judicial circuits, as follows:

The counties of Norfolk, Princess Anne, and the city of Portsmouth, shall constitute the first circuit.

The counties of Nansemond, Southampton, Isle of Wight, and the city of Norfolk, shall constitute the second circuit.

The counties of Prince George, Surry, Sussex, Greenesville, and Brunswick, shall constitute the third circuit.

The counties of Chesterfield, Powhatan, Dinwiddie, Nottoway, and Amelia, and the city of Petersburg, shall constitute the fourth circuit.

The counties of Prince Edward, Cumberland, Buckingham, Appomattox, and Charlotte, shall constitute the fifth circuit.

The counties of Lunenburg, Mecklenburg, Halifax, Campbell, and the city of Lynchburg, shall constitute the sixth circuit.

The counties of Pittsylvania, Franklin, Henry, and Patrick, and the city of Danville, shall constitute the seventh circuit.

The counties of Amherst, Nelson, Albemarle, Fluvanna, and Goochland, shall constitute the eighth circuit.

The counties of Rappahannock, Culpeper, Madison, Greene, Orange, and Louisa, shall constitute the ninth circuit.

The county of Henrico and the city of Richmond, shall constitute the tenth circuit.

The counties of Accomac, Northampton, Elizabeth City, and the city of Newport News, shall constitute the eleventh circuit.

The counties of Richmond, Northumberland, Westmoreland, Lancaster, and Essex, shall constitute the twelfth circuit.

The counties of Gloucester, Mathews, King and Queen, King William, and Middlesex, shall constitute the thirteenth circuit.

The counties of New Kent, Charles City, York, Warwick, James City, and the city of Williamsburg, shall constitute the fourteenth circuit.

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The counties of King George, Stafford, Spotsylvania, Caroline, and Hanover, shall constitute the fifteenth circuit.

The counties of Fauquier, Loudoun, Prince William, Fairfax, and Alexandria, and the city of Alexandria, shall constitute the sixteenth circuit.

The counties of Frederick, Clarke, Warren, Shenandoah, and Page, shall constitute the seventeenth circuit.

The counties of Rockingham, Augusta, and Rockbridge, shall constitute the eighteenth circuit.

The counties of Highland, Bath, Alleghany, Craig, and Botetourt, shall constitute the nineteenth circuit.

The counties of Bedford, Roanoke, Montgomery, and Floyd, and the city of Roanoke, shall constitute the twentieth circuit.

The counties of Pulaski, Carroll, Wythe, and Grayson, shall constitute the twenty-first circuit.

The counties of Bland, Tazewell, Giles, and Buchanan, shall constitute the twenty-second circuit.

The counties of Washington, Russell, and Smyth, shall constitute the twenty-third circuit.

The counties of Scott, Lee, Wise, and Dickenson, shall constitute the twenty-fourth circuit.

Sec. 95. After the first day of January, nineteen hundred and six, as the public interest requires, the General Assembly may rearrange the said circuits and increase or diminish the number thereof. But no new circuit shall be created containing, by the last United States census or other census provided by law, less than forty thousand inhabitants, nor when the effect of creating it will be to reduce the number of inhabitants in any existing circuit below forty thousand according to such census.

Sec. 96. For each circuit a judge shall be chosen by the joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office shall reside in the circuit of which he is judge. At the first election under this Constitution, the General Assembly shall elect, as nearly as practicable, one-fourth of the entire number of judges for terms of two years, one-fourth for four years, one-fourth for six years, and the remaining fourth for eight years, respectively; and thereafter they shall be elected for terms of eight years.

Sec. 97. The number of terms of the circuit courts to be held for each county and city, shall be prescribed by law. But no separate circuit court shall be held for any city of the second class, until the city shall abolish

its existing city court. The judge of one circuit may be required or authorized to hold court in any other circuit or city.

Sec. 98. For the purposes of a judicial system, the cities of the State shall be divided into two classes. All cities shall belong to the first class which contain, as shown by the last United States census or other census provided by law, ten thousand inhabitants or more, and all cities shall belong to the second class which contain, as thus shown, less than ten thousand inhabitants. In each city of the first class, there shall be, in addition to the circuit court, a corporation court. In any city containing thirty thousand inhabitants or more, the General Assembly may provide for such additional courts as the public interest may require, and in every such city the city courts, as they now exist, shall continue until otherwise provided by law. In every city of the second class, the corporation or hustings court existing, at the time this Constitution goes into effect, shall continue hereafter under the name of the corporation court of such city; but it may be abolished by a vote of a majority of the qualified electors of such city, at an election held for the purpose, and whenever the office of judge of a corporation or hustings court of a city of the second class, whose salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. In case of the abolition of the corporation or hustings court of any city of the second class, such city shall thereupon come in every respect within the jurisdiction of the circuit court of the county wherein it is situated, until otherwise provided by law, and the records of such corporation or hustings court shall thereupon become a part of the records of such circuit court, and be transferred thereto, and remain therein until otherwise provided by law; and during the existence of the corporation or hustings court, the circuit court of the county in which such city is situated, shall have concurrent jurisdiction with said corporation or hustings court in all actions at law and suits in equity.

Sec. 99. For each city court of record a judge shall be chosen by the joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office shall reside within the jurisdiction of the court over which he presides; but the judge of the corporation court of any corporation having a city charter, and less than five thousand inhabitants, may reside outside its corporate limits; and the same person may be judge of such corporation court and judge of the corporation court of some other city having less than ten thousand inhabitants. At the first election of said judges under this Constitution, the General Assembly shall elect, as nearly as practicable, one-fourth of the

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entire number for terms of two years, one-fourth for four years, one-fourth for six years, and the remaining fourth for eight years; and thereafter they shall be elected for terms of eight years. The judges of city courts in cities of the first class may be required or authorized to hold the circuit courts of any county and the circuit courts of any city.

Sec. 100. The General Assembly shall have power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer, or assurance of titles to land in the State, or any part thereof.

Sec. 101. The General Assembly shall have power to confer upon the clerks of the several circuit courts jurisdiction, to be exercised in the manner and under the regulations to be prescribed by law, in the matter of the admission of wills to probate, and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of the estates of persons who have been adjudged insane or convicted of felony, and in the matter of the substitution of trustees.

Sec. 102. All the judges shall be commissioned by the Governor. They shall receive such salaries and allowances as may be determined by law within the limitations fixed by this Constitution, the amount of which shall not be increased or diminished during their terms of office. Their terms of office shall commence on the first day of February next following their election, and whenever a vacancy occurs in the office of judge, his successor shall be elected for the unexpired term.

Sec. 103. The salaries of the judges of the Supreme Court of Appeals shall be not less than four thousand dollars per annum, and shall be paid by the State.

The salary of the judge of each circuit court shall be not less than two thousand dollars per annum, one-half of which shall be paid by the State, the other half by the counties and cities composing the circuit, according to their respective population; except that of the salary of the judge of the circuit court of the city of Richmond, the State shall pay the proportion which would otherwise fall to the city of Richmond. The salary of a judge of a city court in a city of the first class shall be not less than two thousand dollars per annum, one-half of which shall be paid by the State, the other half by the city. The whole of the aforesaid salaries of said judges shall be paid out of the state treasury, the State to be reimbursed by the respective counties and cities. Any city may, by an ordinance, increase the salaries of its city or circuit judges, or any one or more of them as it may deem proper, and the increase shall be paid wholly by the city, but shall not be enlarged or diminished during the term of office of the

judge. Each city containing less than ten thousand inhabitants shall pay the salary of the judge of its corporation or hustings court.

Sec. 104. Judges may be removed from office for cause, by a concurrent vote of both houses of the General Assembly; but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the General Assembly may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon.

Sec. 105. No judge of the Supreme Court of Appeals, of the circuit court, or of any city court of record shall practice law, within or without this State, nor shall he hold any other office of public trust during his continuance in office; except that the judge of a corporation or hustings court in a city of the second class, may hold the office of commissioner in chancery of the circuit court for the county in which the city is located.

Sec. 106. Writs shall run in the name of the "Commonwealth of Virginia," and be attested by the clerks of the several courts. Indictments shall conclude "against the peace and dignity of the Commonwealth."

Sec. 107. An Attorney-General shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. He shall be commissioned by the Governor, perform such duties and receive such compensation as may be prescribed by law, and shall be removable in the manner prescribed for the removal of judges.

Sec. 108. The General Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interest may require.

Sec. 109. The General Assembly shall provide by whom, and in what manner, applications for bail shall be heard and determined.

ARTICLE VII.

ORGANIZATION AND GOVERNMENT OF COUNTIES.

Sec. 110. There shall be elected by the qualified voters of each county, one county treasurer, who shall not be elected or serve for more than two consecutive terms, nor act as deputy of his immediate successor; one sheriff, one attorney for the Commonwealth, and one county clerk, who shall be the clerk of the circuit court. There shall be elected or appointed, for four years, as the General Assembly may provide, commis-

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sioners of the revenue, for each county, the number, duties and compensation of whom shall be prescribed by law; but should such commissioners of the revenue be chosen by election by the people then they shall be ineligible for re-election to the office for the next succeeding term.

There shall be appointed, for each county, in such manner as may be provided by law, one superintendent of the poor, and one county surveyor.

Sec. 111. The magisterial districts shall, until changed by law, remain as now constituted: provided, that hereafter no additional districts shall be made containing less than thirty square miles. In each district there shall be elected by the qualified voters thereof, one supervisor. The supervisors of the districts shall constitute the board of supervisors of the county, which shall meet at stated periods and at other times as often as may be necessary, lay the county and district levies, pass upon all claims against the county, subject to such appeal as may be provided by law, and perform such duties as may be required by law.

Sec. 112. All regular elections for county and district officers shall be held on Tuesday after the first Monday in November, and all of said officers shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall hold their respective offices for the term of four years, except that the county clerk shall hold office for eight years; provided that the term of the clerks first elected under this Constitution shall begin on the first of February, nineteen hundred and four, and end on the first of January, nineteen hundred and twelve.

Sec. 113. No person shall at the same time hold more than one of the offices mentioned in this article. Any officer required by law to give bond may be required to give additional security thereon, or to execute a new bond, and in default of so doing his office shall be declared vacant.

Sec. 114. Counties shall not be made responsible for the acts of the sheriffs.

Sec. 115. The General Assembly shall provide for the examination of the books, accounts and settlements of county and city officers who are charged with the collection and disbursement of public funds.

ARTICLE VIII.

ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS.

Sec. 116. As used in this article the words "incorporated communities" shall be construed to relate only to cities and towns. All incorporated communities, having within defined boundaries a population of five thousand or more, shall be known as cities; and all incorporated commu-

nities, having within defined boundaries a population of less than five thousand, shall be known as towns. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census, or such other enumeration as may be made by authority of the General Assembly; but nothing in this section shall be construed to repeal the charter of any incorporated community of less than five thousand inhabitants having a city charter at the time of the adoption of this Constitution, or to prevent the abolition by such incorporated communities of the corporation or hustings court thereof.

Sec. 117. General laws for the organization and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided in Article Four of this Constitution, and then only by a recorded vote of two-thirds of the members elected to each house. But each of the cities and towns of the State having at the time of the adoption of this Constitution a municipal charter may retain the same, except so far as it shall be repealed or amended by the General Assembly: provided, that every such charter is hereby amended so as to conform to all the provisions, restrictions, limitations and powers set forth in this article, or otherwise provided in this Constitution.

Sec. 118. In each city which has a court in whose office deeds are admitted to record, there shall be elected for a term of eight years by the qualified voters of such city a clerk of said court, who shall perform such other duties as may be required by law.

There shall be elected in like manner and for a like term all such additional clerks of courts for cities as the General Assembly may prescribe, or as are now authorized by law, so long as such courts shall continue in existence. But in no city of less than thirty thousand inhabitants shall there be more than one clerk of the court, who shall be clerk of all the courts of record in such city.

Sec. 119. In every city, so long as it has a corporation court, or a separate circuit court, there shall be elected for a term of four years by the qualified voters of such city, one attorney for the Commonwealth, who shall also, in those cities having a separate circuit court, be the attorney for the Commonwealth, for such circuit court.

In every city there shall be elected, or appointed, for a term of four years, in a manner to be provided by law, one commissioner of revenue, whose duties and compensation shall be prescribed by law; but should he be elected by the people, he shall be ineligible for re-election to the office for the next succeeding term.

Sec. 120. In every city there shall be elected by the qualified voters

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thereof one city treasurer, for a term of four years, but he shall not be eligible for more than two consecutive terms, nor act as deputy for his immediate successor; one city sergeant, for a term of four years, whose duties shall be prescribed by law; and, a mayor, for a term of four years, who shall be the chief executive officer of such city. All city and town officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities and towns, or of some division thereof, or appointed by such authorities thereof as the General Assembly shall designate.

The mayor shall see that the duties of the various city officers, members of the police and fire departments, whether elected or appointed, in and for such city, are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on oath. The evidence given by persons so examined shall not be used against them in any criminal proceedings. He shall also have power to suspend such officers and the members of the police and fire departments, and to remove such officers, and also such members of said departments when authorized by the General Assembly, for misconduct in office or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable nôtice to the officer complained of, and an opportunity afforded him to be heard in person, or by counsel, and to present testimony in his defense. From such order of suspension or removal, the city officer so suspended or removed shall have an appeal of right to the corporation court, or, if there be no such court, to the circuit court of such city, in which court the case shall be heard *de novo* by the judge thereof, whose decision shall be final. He shall have all other powers and duties which may be conferred and imposed upon him by general laws.

Sec. 121. There shall be in every city a council, composed of two branches having a different number of members, whose powers and terms of office shall be prescribed by law, and whose members shall be elected by the qualified voters of such city, in the manner prescribed by law, but so as to give as far as practicable, to each ward of such city, equal representation in each branch of said council in proportion to the population of such ward; but in cities of under ten thousand population the General Assembly may permit the council to consist of one branch. No member of the council shall be eligible during his tenure of office as such member, or for one year thereafter, to any office to be filled by the council by election or appointment. The council of every city may, in a manner prescribed by law, increase or diminish the number, and change the boun-

daries, of the wards thereof, and shall, in the year nineteen hundred and three, and in every tenth year thereafter, and also whenever the boundaries of such wards are changed, re-apportion the representation in the council among the wards in a manner prescribed by law; and whenever the council of any such city shall fail to perform the duty so prescribed, a *mandamus* shall lie on behalf of any citizen thereof to compel its performance.

Sec. 122. The mayors and councils of cities shall be elected on the second Tuesday in June, and their terms of office shall begin on the first day of September succeeding. All other elective officers, provided for by this article, or hereafter authorized by law, shall be elected on the Tuesday after the first Monday in November, and their terms of office shall begin on the first day of January succeeding, except that the terms of office of clerks of the city courts shall begin coincidently with that of the judges of said courts: provided, that the General Assembly may change the time of election of all or any of the said officers, except that the election and the beginning of the terms of mayors and councils of cities shall not be made by the General Assembly to occur at the same time with the election and beginning of the terms of office of the other elective officers provided for by this Constitution.

Sec. 123. Every ordinance, or resolution having the effect of an ordinance, shall, before it becomes operative, be presented to the mayor. If he approve he shall sign it, but if not, if the council consist of two branches, he may return it, with his objections in writing, to the clerk, or other recording officer, of that branch in which it originated; which branch shall enter the objections at length on its journal and proceed to reconsider it. If after such consideration two-thirds of all the members elected thereto shall agree to pass the ordinance or resolution it shall be sent, together with the objections, to the other branch, by which it shall likewise be considered, and if approved by two-thirds of all the members elected thereto, it shall become operative notwithstanding the objections of the mayor. But in all such cases the votes of both branches of the council shall be determined by yeas and nays, and the names of the members voting for and against the ordinance or resolution shall be entered on the journal of each branch. If the council consist of a single branch, the mayor's objections in writing to any ordinance, or resolution having the effect of an ordinance, shall be returned to the clerk, or other recording officer of the council, and be entered at length on its journal; whereupon the council shall proceed to reconsider the same. Upon such consideration the vote shall be taken in the same manner as where the council consists of two branches, and if the ordinance or resolution be approved

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by two-thirds of all the members elected to the council, it shall become operative notwithstanding the objections of the mayor. If any ordinance or resolution shall not be returned by the mayor within five days (Sunday excepted), after it shall have been presented to him, it shall become operative in like manner as if he had signed it, unless his term of office, or that of the council, shall expire within said five days.

The mayor shall have the power to veto any particular item or items of an appropriation ordinance or resolution; but the veto shall not affect any item or items to which he does not object. The item or items objected to shall not take effect except in the manner provided in this section as to ordinances or resolutions not approved by the mayor. No ordinance or resolution appropriating money exceeding the sum of one hundred dollars, imposing taxes, or authorizing the borrowing of money, shall be passed, except by a recorded affirmative vote of a majority of all the members elected to the council or to each branch thereof where there are two; and in case of the veto by the mayor of such ordinance or resolution, it shall require a recorded affirmative vote of two-thirds of all the members elected to the council, or to each branch thereof where there are two, to pass the same over such veto in the manner provided in this section. Nothing contained in this section shall operate to repeal or amend any provision in any existing city charter requiring a two-thirds vote for the passage of any ordinance as to the appropriation of money, imposing taxes or authorizing the borrowing of money.

Sec. 124. No street railway, gas, water, steam, or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge, company, nor any corporation, association, person or partnership, engaged in these or like enterprises, shall be permitted to use the streets, alleys, or public grounds of a city or town without the previous consent of the corporate authorities of such city or town.

Sec. 125. The rights of no city or town in and to its water front, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, and other public places, and its gas, water, and electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two, and under such other restrictions as may be imposed by law; and in case of the veto by the mayor of such an ordinance or resolution, it shall require a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two, had in the manner heretofore provided for in this article, to pass the same over the veto. No franchise, lease or right of any kind to use any such public property or any other public property

or easement of any description, in a manner not permitted to the general public, shall be granted for a longer period than thirty years. Before granting any such franchise or privilege for a term of years, except for a trunk railway, the municipality shall first, after due advertisement, receive bids therefor publicly, in such manner as may be provided by law, and shall then act as may be required by law. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, be and become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise; and any such plant or property acquired by a city or town may be sold or leased, or, if authorized by law, maintained, controlled and operated, by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for, and shall make adequate provision by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates, and the maintenance of the property in good order throughout the term of the grant. Nothing herein contained shall be construed as preventing the General Assembly from prescribing additional restrictions on the powers of cities and towns in granting franchises or in selling or leasing any of their property, or as repealing any additional restriction now required in relation thereto in any existing municipal charter.

Sec. 126. The General Assembly shall provide by general laws for the extension and the contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purpose shall be valid.

Sec. 127. No city or town shall issue any bonds or other interest-bearing obligations for any purpose, or in any manner, to an amount which, including existing indebtedness, shall, at any time, exceed eighteen per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes: provided, however, that nothing above contained in this section shall apply to those cities and towns whose charters existing at the adoption of this Constitution authorize a larger percentage of indebtedness than is authorized by this section: and provided further, that in determining the limitation of the power of a city or town to incur indebtedness there shall not be included the following classes of indebtedness:

(a.) Certificates of indebtedness, revenue bonds or other obligations issued in anticipation of the collection of the revenue of such city or town for the then current year; provided that such certificates, bonds or

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other obligations mature within one year from the date of their issue, and be not past due, and do not exceed the revenue for such year;

(b.) Bonds authorized by an ordinance enacted in accordance with section One Hundred and Twenty-three, and approved by the affirmative vote of the majority of the qualified voters of the city or town voting upon the question of their issuance, at the general election next succeeding the enactment of the ordinance, or at a special election held for that purpose, for a supply of water or other specific undertaking from which the city or town may derive a revenue; but from and after a period to be determined by the council, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for cost of operation and administration (including interest on bonds issued therefor, and the cost of insurance against loss by injury to persons or property), and an annual amount to be covered into a sinking fund sufficient to pay, at or before maturity, all bonds issued on account of said undertaking, all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking.

Sec. 128. In cities and towns the assessment of real estate and personal property for the purpose of municipal taxation, shall be the same as the assessment thereof for the purpose of state taxation, whenever there shall be a state assessment of such property.

ARTICLE IX.

EDUCATION AND PUBLIC INSTRUCTION.

Sec. 129. The General Assembly shall establish and maintain an efficient system of public free schools throughout the State.

Sec. 130. The general supervision of the school system shall be vested in a State Board of Education, composed of the Governor, Attorney-General, Superintendent of Public Instruction, and three experienced educators to be elected quadrennially by the Senate, from a list of eligibles, consisting of one from each of the faculties, and nominated by the respective boards of visitors or trustees, of the University of Virginia, the Virginia Military Institute, the Virginia Polytechnic Institute, the State Female Normal School at Farmville, the School for the Deaf and Blind, and also of the College of William and Mary, so long as the State continue its annual appropriation to the last named institution.

The board thus constituted shall select and associate with itself two

division superintendents of schools, one from a county and the other from a city, who shall hold office for two years, and whose powers and duties shall be identical with those of other members, except that they shall not participate in the appointment of any public school official.

Any vacancy occurring during the term of any member of the board shall be filled for the unexpired term by said board.

Sec. 131. The Superintendent of Public Instruction, who shall be an experienced educator, shall be elected by the qualified voters of the State at the same time and for the same term as the Governor. Any vacancy in said office shall be filled for the unexpired term by the said board.

His duties shall be prescribed by the State Board of Education, of which he shall be *ex-officio* president; and his compensation shall be fixed by law.

Sec. 132. The duties and powers of the State Board of Education shall be as follows:

First. It may, in its discretion, divide the State into appropriate school divisions, comprising not less than one county or city each, but no county or city shall be divided in the formation of such divisions. It shall, subject to the confirmation of the Senate, appoint, for each of such divisions, one superintendent of schools, who shall hold office for four years, and shall prescribe his duties, and may remove him for cause and upon notice.

Second. It shall have, regulated by law, the management and investment of the school fund.

Third. It shall have authority to make all needful rules and regulations for the management and conduct of the schools, which, when published and distributed, shall have the force and effect of law, subject to the authority of the General Assembly to revise, amend, or repeal the same.

Fourth. It shall select text books and educational appliances for use in the schools of the State, exercising such discretion as it may see fit in the selection of books suitable for the schools in the cities and counties respectively.

Fifth. It shall appoint a board of directors, consisting of five members, to serve without compensation, which shall have the management of the State Library, and the appointment of a librarian and other employees thereof, subject to such rules and regulations as the General Assembly shall prescribe; but the Supreme Court of Appeals shall have the management of the law library and the appointment of the librarian and other employees thereof.

Sec. 133. Each magisterial district shall constitute a separate school

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district, unless otherwise provided by law. In each school district there shall be three trustees selected, in the manner and for the term of office prescribed by law.

Sec. 134. The General Assembly shall set apart as a permanent and perpetual literary fund, the present literary fund of the State; the proceeds of all public lands donated by Congress for public free school purposes; of all escheated property; of all waste and unappropriated lands; of all property accruing to the State by forfeiture, and all fines collected for offences committed against the State, and such other sums as the General Assembly may appropriate.

Sec. 135. The General Assembly shall apply the annual interest on the literary fund; that portion of the capitation tax provided for in the Constitution to be paid into the State treasury, and not returnable to the counties and cities; and an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, for the equal benefit of all of the people of the State, to be apportioned on a basis of school population; the number of children between the ages of seven and twenty years in each school district to be the basis of such apportionment: but if at any time the several kinds or classes of property shall be segregated for the purposes of taxation, so as to specify and determine upon what subjects state taxes and upon what subjects local taxes may be levied, then the General Assembly may otherwise provide for a fixed appropriation of state revenue to the support of the schools not less than that provided in this section.

Sec. 136. Each county, city, town if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, not to exceed in the aggregate five mills on the dollar in any one year, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require: provided, that such primary schools as may be established in any school year, shall be maintained at least four months of that school year, before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade. The boards of supervisors of the several counties, and the councils of the several cities, and towns if the same be separate school districts, shall provide for the levy and collection of such local school taxes.

Sec. 137. The General Assembly may establish agricultural, normal, manual training and technical schools, and such grades of schools as shall be for the public good.

Sec. 138. The General Assembly may, in its discretion, provide for the

compulsory education of children between the ages of eight and twelve years, except such as are weak in body or mind, or can read and write, or are attending private schools, or are excused for cause by the district school trustees.

Sec. 139. Provision shall be made to supply children attending the public schools with necessary text-books in cases where the parent or guardian is unable, by reason of poverty, to furnish them.

Sec. 140. White and colored children shall not be taught in the same school.

Sec. 141. No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof: provided, first, that the General Assembly may, in its discretion, continue the appropriations to the College of William and Mary; second, that this section shall not be construed as requiring or prohibiting the continuance or discontinuance by the General Assembly of the payment of interest on certain bonds held by certain schools and colleges as provided by an act of the General Assembly, approved February twenty-third, eighteen hundred and ninety-two, relating to bonds held by schools and colleges; third, that counties, cities, towns, and districts may make appropriations to non-sectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.

Sec. 142. Members of the boards of visitors or trustees of educational institutions shall be appointed as may be provided by law, and shall hold for the term of four years: provided, that at the first appointment, if the board be of an even number, one-half of them, or, if of an odd number, the least majority of them, shall be appointed for two years.

ARTICLE X.

AGRICULTURE AND IMMIGRATION.

Sec. 143. There shall be a Department of Agriculture and Immigration, which shall be permanently maintained at the capital of the State, and which shall be under the management and control of a Board of Agriculture and Immigration, composed of one member from each congressional district, who shall be a practical farmer, appointed by the Governor for a term of four years, subject to confirmation by the Senate, and the president of the Virginia Polytechnic Institute, who shall be

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ex-officio a member of the board: provided, that members of the board first appointed under this Constitution from the congressional districts bearing odd numbers shall hold office for two years.

Sec. 144. The powers and duties of the board shall be prescribed by law: provided, that it shall have power to elect and remove its officers, and establish elsewhere in the State subordinate branches of said department.

Sec. 145. There shall be a Commissioner of Agriculture and Immigration, whose term of office shall be four years, and who shall be elected by the qualified voters of the State, and whose powers and duties shall be prescribed by the Board of Agriculture and Immigration until otherwise provided by law.

Sec. 146. The president of the Board of Agriculture and Immigration shall be *ex-officio* a member of the Board of Visitors of the Virginia Polytechnic Institute.

ARTICLE XI.

PUBLIC INSTITUTIONS AND PRISONS.

Sec. 147. There shall be a state penitentiary, with such branch prisons and prison farms as may be provided by law.

Sec. 148. There shall be appointed by the Governor, subject to confirmation by the Senate, a board of five directors which, subject to such regulations and requirements as may be prescribed by law, shall have the government and control of the penitentiary, branch prisons, and prison farms, and shall appoint the superintendents and surgeons thereof. The respective superintendents shall appoint, and may remove, all other officers and employees of the penitentiary, branch prisons, and prison farms, subject to the approval of the board of directors. The superintendents and surgeons shall be appointed for a term of four years, and be removable by the board of directors for misbehavior, incapacity, neglect of official duty, or acts performed without authority of law. The terms of the directors first appointed shall be one, two, three, four, and five years, respectively; and thereafter, upon the expiration of the term of a director, his successor shall be appointed for a term of five years.

Sec. 149. For each state hospital for the insane now existing, or hereafter established, there shall be a special board of directors, consisting of three members, who shall be appointed by the Governor, subject to confirmation by the Senate; such board shall have the management of the hospital for which it is appointed, under the supervision and con-

trol of the general board of directors hereinafter constituted. The terms of the directors first appointed shall be two, four, and six years, respectively, and thereafter, upon the expiration of the term of a member, his successor shall be appointed for a term of six years.

Sec. 150. There shall be a general board of directors for the control and management of all the state hospitals for the insane now existing or hereafter established, which shall consist of all the directors appointed members of the several special boards. The general board of directors shall be subject to such regulations and requirements as the General Assembly may from time to time prescribe, and shall have full power and control over the special boards of directors and all of the officers and employees of the said hospitals.

Sec. 151. The general board of directors shall appoint for a term of four years a superintendent for each hospital, who shall be removable by said board for misbehavior, incapacity, neglect of official duty, or acts performed without authority of law. The special board of each hospital, shall, subject to the approval of the general board, appoint for a term of four years all other resident officers. The superintendent of each hospital shall appoint, and may remove, with the approval of the special board, all other employees of such hospital.

Sec. 152. There shall be a Commissioner of State Hospitals for the Insane, who shall be appointed by the Governor, subject to confirmation by the Senate, for a term of four years. He shall be *ex-officio* chairman of the general and of each of the special boards of directors, and shall be responsible for the proper disbursement of all moneys appropriated or received from any source for the maintenance of such hospitals; he shall cause to be established and maintained at all of the hospitals a uniform system of keeping the records and the accounts of money received and disbursed and of making the reports thereof. He shall perform such other duties and shall execute such bond and receive such salary as may be prescribed by law.

ARTICLE XII.

CORPORATIONS.

Sec. 153. As used in this article, the term "corporation" or "company" shall include all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals or unlimited partnerships, and exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be con-

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strued to mean the charter of incorporation by, or under, which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing or operating for hire a railroad, street railway, canal, steamboat or steamship line, and also any freight car company, car association, or car trust, express company, or company, trustee or person in any way engaged in business as a common carrier over a route acquired in whole or in part under the right of eminent domain; the term "rate" shall be construed to mean "rate of charge for any service rendered or to be rendered"; the terms "rate," "charge" and "regulation," shall include joint rates, joint charges, and joint regulations, respectively; the term "transmission company" shall include any company owning, leasing, or operating for hire, any telegraph or telephone line; the term "freight" shall be construed to mean any property transported, or received for transportation, by any transportation company; the term "public service corporation" shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person," as used in this article, shall include individuals, partnerships and corporations, in the singular as well as plural number; the term "bond" shall mean all certificates, or written evidences, of indebtedness issued by any corporation and secured by mortgage or trust deed; the term "frank" shall be construed to mean any writing or token, issued by, or under authority of, a transmission company, entitling the holder to any service from such company free of charge. The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the Federal Constitution, and as if the necessary limitations upon their interpretation had been herein expressed in each case.

Sec. 154. The creation of corporations, and the extension and amendment of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment or extension applied for, and to issue, or refuse, the same accordingly. Such general laws may be amended or repealed by the General Assembly; and all charters and amendments of charters, now existing and revocable, or hereafter granted or extended, may be repealed at any time by special act. Provision shall

be made, by general laws, for the voluntary surrender of its charter by any corporation, and for the forfeiture thereof for non-user or mis-user. The General Assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers or privileges.

Sec. 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court. The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of insurance, banking or other special branches of the business of that department. All sessions of

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the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

Sec. 156. (*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and

transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation

published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws: provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be

prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in sub-section *e* of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, schedule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other

action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties: provided, however, that the writs of *mandamus* and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*e*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting the rates, charges or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal, be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on,

or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct: but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should

have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in ad-

dition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend sub-sections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof; provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

Sec. 157. Provision shall be made by general laws for the payment of a fee to the Commonwealth by every domestic corporation, upon the granting, amendment or extension of its charter, and by every foreign corporation upon obtaining a license to do business in this State as specified in this section; and also for the payment, by every domestic corporation, and foreign corporation doing business in this State, of an annual registration fee of not less than five dollars nor more than twenty-five dollars, which shall be irrespective of any specific license, or other, tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property; and for the making, by every such corporation (at the time of paying such annual registration fee), of such report to the State Corporation Commission, of the status, business or condition of such corporation, as the General Assembly may prescribe. No foreign corporation shall have authority to do business in this State, until it shall have first obtained from the commission a license to do business in this State, upon such terms and conditions as may be prescribed by law. The failure by any corporation for two successive years to pay its annual registration fee, or to make its said annual reports, shall, when such failure shall have continued for ninety days after the expiration of such two years, operate as a revocation and annulment of the charter of such corporation if it be a domestic company, or, of its license to do business in this State if it be a foreign company; and the General Assembly shall provide additional and suitable penalties for the failure of any corporation to comply promptly with the requirements of this section, or of any laws passed in pursuance thereof. The commission shall compel all corporations to comply promptly with such requirements, by enforcing, in the manner hereinbefore authorized, such fines and penalties against the delinquent company as may be provided for, or authorized by, this article; but the General Assembly may relieve from the payment of the said registration fee any purely charitable institution or institutions.

Sec. 158. Every corporation heretofore chartered in this State, which shall hereafter accept, or effect, any amendment or extension of its

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charter, shall be conclusively presumed to have thereby surrendered every exemption from taxation, and every non-repealable feature of its charter and of the amendments thereof, and also all exclusive rights or privileges theretofore granted to it by the General Assembly and not enjoyed by other corporations of a similar general character; and to have thereby agreed to thereafter hold its charter and franchises, and all amendments thereof, under the provisions and subject to all the requirements, terms and conditions of this Constitution and of any laws passed in pursuance thereof, so far as the same may be applicable to such corporation.

Sec. 159. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

Sec. 160. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property, or for transmitting the same class of messages, over a shorter than over a longer distance, along the same line and in the same direction—the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to charge or receive as great compensation for a shorter as for a longer distance. The State Corporation Commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the commission may prescribe as just and equitable between such company and the public, to or from any junctional or competitive points or localities, or where the competition of points located without this State may make necessary the prescribing of special rates for the protection of the commerce of this State; but this section shall not apply to mileage tickets, or to any special excursion, or commutation, rates, or to special rates for services rendered to the government of this State, or of the United States, or in the interest of some public object, when such tickets or rates shall have been prescribed or authorized by the commission.

Sec. 161. No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any State, county, district or municipal officer, except to members and officers of the State Corporation Commission for their personal use while in office, any frank, free pass, free transportation, or any rebate

or reduction in the rates charged by such company to the general public for like services. For violation of the provisions of this section the offending company shall be liable to such penalties as may be prescribed by law; and any member of the General Assembly, or any such officer, who shall, while in office, accept any gift, privilege or benefit as is prohibited by this section, shall thereby forfeit his office, and be subject to such further penalties as may be prescribed by law; but this section shall not prevent a street railway company from transporting free of charge any member of the police force or fire department while in the discharge of his official duties, nor prohibit the acceptance by any such policeman or fireman of such free transportation.

Sec. 162. The doctrine of fellow-servant, so far as it affects the liability of the master for injuries to his servant resulting from the acts or omissions of any other servant or servants of the common master, is, to the extent hereinafter stated, abolished as to every employee of a railroad company, engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in or upon a car or engine standing upon a track, or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon a train, car or engine; and every such employee shall have the same right to recover for every injury suffered by him from the acts or omissions of any other employee or employees of the common master, that a servant would have (at the time when this Constitution goes into effect), if such acts or omissions were those of the master himself in the performance of a non-assignable duty: provided, that the injury, so suffered by such railroad employee, result from the negligence of an officer, or agent, of the company of a higher grade of service than himself, or from that of a person, employed by the company, having the right, or charged with the duty, to control or direct the general services or the immediate work of the party injured, or the general services or the immediate work of the co-employee through, or by, whose act or omission he is injured; or that it result from the negligence of a co-employee engaged in another department of labor, or engaged upon, or in charge of, any car upon which, or upon the train of which it is a part, the injured employee is not at the time of receiving the injury, or who is in charge of any switch, signal point, or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefor; and whether such negligence be in the performance of an assignable or non-assignable duty. The physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction,

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repair, maintenance, cleaning or operation of trains, cars or engines, shall be regarded as different departments of labor within the meaning of this section. Knowledge, by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures, shall be no defence to an action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representative, surviving consort, and relatives (and any trustee, curator, committee or guardian of such consort or relatives) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a co-employee while in the performance, as vice-principal, of a non-assignable duty of the master. Every contract or agreement, express or implied, made by an employee, to waive the benefit of this section, shall be null and void. This section shall not be construed to deprive any employee, or his legal or personal representative, surviving consort or relatives (or any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that he or they may have by the law of the land, at the time this Constitution goes into effect. Nothing contained in this section shall restrict the power of the General Assembly to further enlarge, for the above-named class of employees, the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of, any other class of employees of railroads or of employees of any person, firm or corporation.

Sec. 163. No foreign corporation shall be authorized to carry on, in this State, the business, or to exercise any of the powers or functions, of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this State, where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this Commonwealth, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this State, when this Constitution goes into effect; but any such foreign public service corporation, so engaged, shall not, without first becoming incorporated under the laws of this State, be authorized to acquire, lease, use or operate, within this State, any public or municipal franchise or fran-

chises in addition to such as it may own, lease, use or operate when this Constitution goes into effect. The property, within this State, of foreign corporations shall always be subject to attachment, the same as that of non-resident individuals; and nothing in this section shall restrict the power of the General Assembly to discriminate against foreign corporations whenever, and in whatsoever respect, it may deem wise or expedient.

Sec. 164. The right of the Commonwealth, through such instrumentalities as it may select, to prescribe and define the public duties of all common carriers and public service corporations, to regulate and control them in the performance of their public duties, and to fix and limit their charges therefor, shall never be surrendered nor abridged.

Sec. 165. The General Assembly shall enact laws preventing all trusts, combinations and monopolies, inimical to the public welfare.

Sec. 166. The exclusive right to build or operate railroads parallel to its own, or any other, line of railroad, shall not be granted to any company; but every railroad company shall have the right, subject to such reasonable regulations as may be prescribed by law, to parallel, intersect, connect with or cross, with its roadway, any other railroad or railroads; but no railroad company shall build or operate any line of railroad not specified in its charter, or in some amendment thereof. All railroad companies, whose lines of railroad connect, shall receive and transport each other's passengers, freight, and loaded or empty cars, without delay or discrimination. Nothing in this section shall deprive the General Assembly of the right to prevent by statute, repealable at pleasure, any railroad from being built parallel to the present line of the Richmond, Fredericksburg and Potomac railroad.

Sec. 167. The General Assembly shall enact general laws regulating and controlling all issues of stock and bonds by corporations. Whenever stock or bonds are to be issued by a corporation, it shall, before issuing the same, file with the State Corporation Commission a statement (verified by the oath of the president or secretary of the corporation, and in such form as may be prescribed or permitted by the commission) setting forth fully and accurately the basis, or financial plan, upon which such stock or bonds are to be issued; and where such basis or plan includes services or property (other than money), received or to be received by the company, such statement shall accurately specify and describe, in the manner prescribed, or permitted, by the commission, the services and property, together with the valuation at which the same are received or to be received; and such corporation shall comply with any other requirements or restrictions which may be imposed by law. The

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General Assembly shall provide adequate penalties for the violation of this section, or of any laws passed in pursuance thereof; and it shall be the duty of the commission to adjudge, and enforce (in the manner hereinbefore provided), against any corporation refusing or failing to comply with the provisions of this section, or of any laws passed in pursuance thereof, such fines and penalties as are authorized by this Constitution, or may be prescribed by law.

ARTICLE XIII.

TAXATION AND FINANCE.

Sec. 168. All property, except as hereinafter provided, shall be taxed; all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Sec. 169. Except as hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits, than is imposed on similar property within its limits at the time such land is added. Nothing in this Constitution shall prevent the General Assembly, after the first day of January, nineteen hundred and thirteen, from segregating for the purposes of taxation, the several kinds or classes of property, so as to specify and determine upon what subjects, state taxes, and upon what subjects, local taxes may be levied.

Sec. 170. The General Assembly may levy a tax on incomes in excess of six hundred dollars per annum; may levy a license tax upon any business which cannot be reached by the *ad valorem* system; and may impose state franchise taxes, and in imposing a franchise tax, may, in its discretion, make the same in lieu of taxes upon other property, in whole or in part, of a transportation, industrial, or commercial corporation. Whenever a franchise tax shall be imposed upon a corporation doing business in this State, or whenever all the capital, however invested, of a corporation chartered under the laws of this State, shall be taxed, the shares of stock issued by any such corporation, shall not be further taxed. No city or town shall impose any tax or assessment upon abutting land owners for street or other public local improvements, except for making and improving the walkways upon then existing streets, and improving

and paving then existing alleys, and for either the construction, or for the use of sewers; and the same when imposed, shall not be in excess of the peculiar benefits resulting therefrom to such abutting land owners. Except in cities and towns, no such taxes or assessments, for local public improvements shall be imposed on abutting land owners.

Sec. 171. The General Assembly shall provide for a re-assesement of real estate, in the year nineteen hundred and five, and every fifth year thereafter, except that of railway and canal corporations, which, after January the first, nineteen hundred and thirteen, may be assessed as the General Assembly may provide.

Sec. 172. The General Assembly shall provide for the special and separate assessment of all coal and other mineral land; but until such special assessment is made, such land shall be assessed under existing laws.

Sec. 173. The General Assembly shall levy a state capitation tax of, and not exceeding, one dollar and fifty cents per annum on every male resident of the State not less than twenty-one years of age, except those pensioned by this State for military services; one dollar of which shall be applied exclusively in aid of the public free schools, in proportion to the school population, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper county or city authorities to such county or city purposes as they shall respectively determine; but said state capitation tax shall not be a lien upon, nor collected by legal process from, the personal property which may be exempt from levy or distress under the poor debtor's law. The General Assembly may authorize the board of supervisors of any county, or the council of any city or town, to levy an additional capitation tax not exceeding one dollar per annum on every such resident within its limits, which shall be applied in aid of the public schools of such county, city or town, or for such other county, city or town purposes as they shall determine.

Sec. 174. After this Constitution shall be in force, no statute of limitation shall run against any claim of the State for taxes upon any property; nor shall the failure to assess property for taxation defeat a subsequent assessment for and collection of taxes for any preceding year or years, unless such property shall have passed to a *bona fide* purchaser for value, without notice; in which latter case the property shall be assessed for taxation against such purchaser from the date of his purchase.

Sec. 175. The natural oyster beds, rocks, and shoals, in the waters of this State, shall not be leased, rented or sold, but shall be held in trust

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for the benefit of the people of this State, subject to such regulations and restrictions as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks or shoals, by surveys or otherwise.

Sec. 176. The State Corporation Commission shall annually ascertain and assess, at the time hereinafter mentioned, and in the manner required of the Board of Public Works, by the law in force on January the first, nineteen hundred and two, the value of the roadbed, and other real estate, rolling stock, and all other personal property whatsoever (except its franchise and the non-taxable shares of stock issued by other corporations) in this State, of each railway corporation, whatever its motive power, now or hereafter liable for taxation upon such property; the canal bed and other real estate, the boats and all other personal property whatsoever (except its franchise and the non-taxable shares of stock issued by other corporations) in this State, of each canal corporation, empowered to conduct transportation; and such property shall be taxed for state, county, city, town, and district purposes in the same manner as authorized by said law, at such rates of taxation as may be imposed by them, respectively, from time to time, upon the real estate and personal property of natural persons: provided, that no tax shall be laid upon the net income of such corporations.

Sec. 177. Each such railway or canal corporation, including also any such as is exempt from taxation as to its works, visible property, or profits, shall also pay an annual state franchise tax equal to one per centum upon the gross receipts hereinafter specified in section One Hundred and Seventy-eight, for the privilege of exercising its franchises in this State, which, with the taxes provided for in section One Hundred and Seventy-six, shall be in lieu of all other taxes or license charges whatsoever upon the franchises of such corporation, the shares of stock issued by it, and upon its property assessed under section One Hundred and Seventy-six: provided, that nothing herein contained shall exempt such corporation from the annual fee required by section One Hundred and Fifty-seven of this Constitution, or from assessments for street and other public local improvements authorized by section One Hundred and Seventy; and provided, further, that nothing herein contained shall annul or interfere with, or prevent any contract or agreement by ordinance between street railway corporations and municipalities, as to compensation for the use of the streets or alleys of such municipalities by such railway corporations.

Sec. 178. The amount of such franchise tax shall be equal to one per centum of the gross transportation receipts of such corporations for the

year ending June the thirtieth of each year, to be ascertained by the State Corporation Commission, in the following manner:

(a) When the road or canal of the corporation lies wholly within this State, the tax shall be equal to one per centum of the entire gross transportation receipts of such corporation.

(b) When the road or canal of the corporation lies partly within and partly without this State, or is operated as a part of a line or system extending beyond this State, the tax shall be equal to one per centum of the gross transportation receipts earned within this State, to be determined as follows: By ascertaining the average gross transportation receipts per mile over its whole extent within and without this State, and multiplying the result by the number of miles operated within this State: provided, that from the sum so ascertained there may be a reasonable deduction because of any excess of value of the terminal facilities or other similar advantages in other states over similar facilities or advantages in this State.

Sec. 179. Each corporation mentioned in sections One Hundred and Seventy-six and One Hundred and Seventy-seven shall annually, on the first day of September, make to the State Corporation Commission the report which the law, in force January the first, nineteen hundred and two, required to be made annually to the Board of Public Works by every railroad and canal company in this State, not exempt from taxation by virtue of its charter, which report shall also show the property taxable in this State belonging to the corporation on the thirtieth day of June preceding, and its total gross transportation receipts for the year ending on that date. Upon receiving such report the State Corporation Commission shall, after thirty days' notice previously given, as provided by said law, assess the value of the property not exempt from taxation, of the corporation, and ascertain the amount of the franchise tax and other state taxes chargeable against it. All taxes for which the corporation is liable shall be paid on or before the first day of December following. The provisions of said law, except as changed by this article, shall apply to the ascertainment and collection of the franchise, as well as other taxes of such corporations. Said taxes, until paid, shall be a lien upon the property within this State of the corporation owning the same, and take precedence of all other liens or incumbrances.

Sec. 180. Any corporation aggrieved by the assessment and ascertainment made under sections One Hundred and Seventy-six and One Hundred and Seventy-eight may, within thirty days after receiving a certified copy thereof, apply for relief to the circuit court of the city of Richmond. Notice of the application, setting forth the grounds of com-

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plaint, verified by affidavit, shall be served on the State Corporation Commission, and on the Attorney-General whose duty it shall be to represent the State. The court, if of opinion that the assessment or tax is excessive, shall reduce the same; but, if of opinion, that it is insufficient, shall increase the same. Unless the applicant paid the taxes under protest, when due, the court, if it disallow the application, shall give judgment against it for a sum, by way of damages, equal to interest at the rate of one per centum per month upon the amount of taxes from the time the same were payable. If the application be allowed, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that may have been paid, with legal interest thereon, and costs, from the State or local authorities, or both, as the case may be; the judgment to be enforceable by *mandamus* or other proper process issuing from the court finally adjudicating the application. Subject to the provisions of Article Six of this Constitution, the Supreme Court of Appeals may allow a writ of error to either party.

Sec. 181. After January the first, nineteen hundred and three, the system of taxation, as to the corporations mentioned in sections One Hundred and Seventy-six and One Hundred and Seventy-seven, shall be as set forth in sections One Hundred and Seventy-six to One Hundred and Eighty, inclusive; and for that year the franchise tax shall be based upon such gross receipts for the year ending the thirtieth day of June, nineteen hundred and three, and such system shall so remain until the first day of January, nineteen hundred and thirteen, and thereafter until modified or changed, as may be prescribed by law: provided, that, if the said system shall for any reason become inoperative, the General Assembly shall have power to adopt some other system.

Sec. 182. Until otherwise prescribed by law, the shares of stock issued by trust or security companies chartered by this State, and by incorporated banks, shall be taxed in the same manner in which the shares of stock issued by incorporated banks were taxed, by the law in force January the first, nineteen hundred and two; but from the total assessed value of the shares of stock of any such company or bank, there shall be deducted the assessed value of its real estate otherwise taxed in this State, and the value of each share of stock shall be its proportion of the remainder.

Sec. 183. Except as otherwise provided in this Constitution, the following property and no other, shall be exempt from taxation, state and local; but the General Assembly may hereafter tax any of the property hereby exempted save that mentioned in sub-section (a):

(a) Property directly or indirectly owned by the State, however held,

and property lawfully owned and held by counties, cities, towns, or school districts, used wholly and exclusively for county, city, town, or public-school purposes, and obligations issued by the State since the fourteenth day of February, eighteen hundred and eighty-two or hereafter exempted by law.

(b) Buildings with land they actually occupy, and the furniture and furnishings therein lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

(c) Private family burying-grounds not exceeding one acre in area, reserved as such by will or deed, or shown by other sufficient evidence to be reserved as such, and so exclusively used, and public burying-grounds and lots therein exclusively used for burial purposes, and not conducted for profit, whether owned or managed by local authorities or by private corporations.

(d) Buildings with the land they actually occupy and the furniture, furnishings, books and instruments therein, wholly devoted to educational purposes, belonging to, and actually and exclusively occupied and used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions of learning, including the Virginia Historical Society, which are not corporations having shares of stock or otherwise owned by individuals or other corporations; together with such additional adjacent land owned by such churches, libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, respectively; and also the buildings thereon used as residences by the officers or instructors of such educational institutions; and also the permanent endowment funds held by such libraries and educational institutions directly or in trust, and not invested in real estate: provided, that such libraries and educational institutions are not conducted for profit of any person or persons, natural or corporate, directly, or under any guise or pretence whatsoever. But the exemption mentioned in this sub-section shall not apply to any industrial school, individual or corporate, not the property of the State, which does work for compensation, or manufactures and sells articles, in the community in which such school is located; provided, that nothing herein contained shall restrict any such school from doing work for or selling its own products or any other articles to any of its students or employees.

(e) Real estate belonging to, actually and exclusively occupied, and

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used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, which are not conducted for profit, but purely and completely as charities.

(f) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes; and

(g) Property belonging to the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, and the Mount Vernon Ladies' Association of the Union.

No inheritance tax shall be charged, directly or indirectly, against any legacy or devise made according to law for the benefit of any institution or other body or any natural or corporate person whose property is exempt from taxation as hereinbefore mentioned in this section.

Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association or corporation, who shall, expressly or impliedly, directly or indirectly, contract or promise to pay any sum of money or other benefit, on account of death, sickness, or accident to any of its members or any other person; and whenever any building or land, or part thereof, mentioned in this section and not belonging to the State, shall be leased or shall be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city, or town; and nothing herein contained shall be construed as authorizing or requiring any county, city, or town to tax for county, city or town purposes, in violation of the rights of the lessees thereof existing under any lawful contract heretofore made, any real estate owned by such county, city or town, and heretofore leased by it.

Obligations issued by counties, cities, or towns may be exempted by the authorities of such localities from local taxation.

Sec. 184. No debt shall be contracted by the State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war. No scrip, certificate, or other evidence of state indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution.

Sec. 185. Neither the credit of the State, nor of any county, city, or town, shall be, directly or indirectly, under any device or pretence what-

soever, granted to or in aid of any person, association, or corporation; nor shall the State, or any county, city, or town subscribe to or become interested in the stock or obligations of any company, association, or corporation, for the purpose of aiding in the construction or maintenance of its work; nor shall the State become a party to or become interested in any work of internal improvement, except public roads, or engaged in carrying on any such work; nor assume any indebtedness of any county, city, or town, nor lend its credit to the same; but this section shall not prevent a county, city or town from perfecting a subscription to the capital stock of a railroad company authorized by existing charter conditioned upon the affirmative vote of the voters and freeholders of such county, city or town in favor of such subscription: provided, that such vote be had prior to July first, nineteen hundred and three.

Sec. 186. All taxes, licenses, and other revenue of the State, shall be collected by its proper officers and paid into the state treasury. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years after the end of the session of the General Assembly, at which the law is enacted authorizing the same; and no appropriation shall be made for the payment of any debt or obligation created in the name of the State during the war between the Confederate States and the United States. Nor shall any county, city, or town pay any debt or obligation created by such county, city, or town in aid of said war.

Sec. 187. The General Assembly shall provide and maintain a sinking fund in accordance with the provisions of section Ten of the act, approved February the twentieth, eighteen hundred and ninety-two, entitled "an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before, and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February the fourteenth, eighteen hundred and eighty-two." Every law hereafter enacted by the General Assembly, creating a debt or authorizing a loan, shall provide for the creation and maintenance of a sinking fund for the payment or redemption of the same.

Sec. 188. No other or greater amount of tax or revenue shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State.

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Sec. 189. On all lands and the improvements thereon, and on all tangible personal property, not exempt from taxation by the provisions of this article, the rate of state taxation shall be twenty cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government and the indebtedness of the State, and a further tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State: provided, that after the first day of January, nineteen hundred and seven, the tax rate upon said real and personal property, for such purposes shall be prescribed by law. But the General Assembly during such period of four years, in addition to making annually an appropriation for pensions not to exceed the last appropriation made for such purpose prior to September the thirtieth, nineteen hundred and one, may levy annually, a special tax for pensions, on such real and personal property of not exceeding five cents on the hundred dollars of the assessed value thereof.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS.

HOMESTEAD AND OTHER EXEMPTIONS.

Sec. 190. Every householder or head of a family shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnishment, or sale under any execution, order, or other process issued on any demand for a debt hereafter contracted, his real and personal property, or either, including money and debts due him, to the value of not exceeding two thousand dollars, to be selected by him: provided, that such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases:

First. For the purchase price of said property, or any part thereof. If the property purchased, and not paid for, be exchanged for, or converted into, other property by the debtor, such last-named property shall not be exempted from the payment of such unpaid purchase money under the provisions of this article;

Second. For services rendered by a laboring person or mechanic;

Third. For liabilities incurred by any public officer, or officer of a court, or any fiduciary, or any attorney-at-law for money collected;

Fourth. For a lawful claim for any taxes, levies, or assessments accruing after the first day of June, eighteen hundred and sixty-six;

Fifth. For rent;

Sixth. For the legal or taxable fees of any public officer or officer of a court.

Sec. 191. The said exemption shall not be claimed or held in a shifting stock of merchandise, or in any property, the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration.

Sec. 192. The General Assembly shall prescribe the manner and the conditions on which a householder or head of a family shall set apart and hold for himself and family a homestead in any of the property hereinbefore mentioned. But this section shall not be construed as authorizing the General Assembly to defeat or impair the benefits intended to be conferred by the provisions of this article.

Sec. 193. Nothing contained in this article shall invalidate any homestead exemption heretofore claimed under the provisions of the former Constitution; or impair in any manner the right of any householder or head of a family existing at the time that this Constitution goes into effect, to select the exemption, or any part thereof, to which he was entitled under the former Constitution; provided that such right, if hereafter exercised, be not in conflict with the exemptions set forth in sections One Hundred and Ninety and One Hundred and Ninety-one. But no person who has selected and received the full exemption allowed by the former Constitution shall be entitled to select an additional exemption under this Constitution; and no person who has selected and received part of the exemption allowed by the former Constitution shall be entitled to select an additional exemption beyond the difference between the value of such part and a total valuation of two thousand dollars. So far as necessary to accomplish the purposes of this section the provisions of chapter One Hundred and Seventy-eight of the Code of Virginia, and the acts amendatory thereof, shall remain in force until repealed by the General Assembly. The provisions of this article shall be liberally construed.

Sec. 194. The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as "stay laws"; but this section shall not be construed as prohibiting any legislation which the General Assembly may deem necessary to fully carry out the provisions of this article.

HEIRS OF PROPERTY.

Sec. 195. The children of parents, one or both of whom were slaves at and during the period of cohabitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was cohabited with as such, shall be as capable of inheriting any estate whereof such father may have died seised, or possessed, or to which he was entitled, as though they had been born in lawful wedlock.

ARTICLE XV.

FUTURE CHANGES IN THE CONSTITUTION.

Sec. 196. Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such times as it shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors, qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become part of the Constitution.

Sec. 197. At such time as the General Assembly may provide, a majority of the members elected to each house being recorded in the affirmative, the question, "shall there be a convention to revise the Constitution and amend the same?" shall be submitted to the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting thereon, shall vote in favor of a convention for such purpose, the General Assembly, at its next session, shall provide for the election of delegates to such convention; and no convention for such purpose shall be otherwise called.

SCHEDULE.

That no inconvenience may arise from the adoption of this Constitution, and in order to provide for carrying it into complete operation, it is hereby ordained that:

Section 1. The common law and the statute laws in force at the time this Constitution goes into effect, so far as not repugnant thereto or repealed thereby, shall remain in force until they expire by their own limitation, or are altered or repealed by the General Assembly.

Sec. 2. All ordinances adopted by this Convention, and appended to the official original draft of the Constitution delivered to the Secretary of the Commonwealth, shall have the same force and effect, as if they were parts of this Constitution.

Sec. 3. Except as modified by this Constitution, all writs, actions and causes of action, prosecutions, rights of individuals, of bodies corporate or politic, and of the State, shall continue. All legal proceedings, civil and criminal, pending at the time this Constitution goes into effect, or instituted prior to the first day of February, nineteen hundred and four, in any county or circuit court as now existing, shall be prosecuted therein: provided, that all such matters, which are not finally terminated before the day last above mentioned, shall, on that date, by operation of this Constitution and Schedule, be transferred to the circuit court of the county or city created under this Constitution, and shall be proceeded with therein. All such matters pending in the city courts, preserved by this Constitution, when the same goes into effect, or thereafter instituted therein, shall continue in said courts, and be therein proceeded with, until otherwise provided by law. All matters before justices of the peace or police justices at the time this Constitution goes into effect, shall be proceeded with before them, until otherwise provided by law. All legal proceedings prosecuted after this Constitution goes into effect, whether in any of the courts now existing, or in those created by this Constitution, shall be proceeded with in the manner now or hereafter provided by law, except as otherwise required by this Constitution.

Sec. 4. All taxes, fines, penalties, forfeitures and escheats, accrued or accruing to the Commonwealth, or to any political subdivision

thereof, under the present Constitution, or under the laws now in force, shall, under this Constitution, enure to the use of the Commonwealth, or of such subdivision thereof.

Sec. 5. All recognizances, and other obligations, and all other instruments entered into or executed before the adoption of this Constitution, or before the complete organization of the departments thereunder, to the Commonwealth, or to any county, or political subdivision thereof, city, town, board, or other public corporation, or institution therein, or to any public officer, shall remain binding and valid, and rights and liabilities thereunder shall continue and may be enforced or prosecuted in the courts of this State as now or hereafter provided by law.

Sec. 6. From the day this Constitution goes into effect, the present judges of the Supreme Court of Appeals, or their successors then in office, shall be the judges of the Supreme Court of Appeals created by this Constitution, and continue in office, unless sooner removed, until February the first, nineteen hundred and seven. The jurisdiction of the court shall be as now or hereafter provided by law, subject to the provisions of this Constitution. All proceedings, then pending in the court as now organized, shall, by virtue of this Constitution, be transferred to and disposed of by the court created by this Constitution.

Sec. 7. The present judicial system of county and circuit courts of the Commonwealth is continued, and the terms of the several judges thereof, with the powers and duties now possessed by them respectively, are continued, until the first day of February, nineteen hundred and four, as if this Constitution had not been adopted; on which day the judicial system of circuit courts created by this Constitution shall go into operation. The terms of the judges of the city courts, as preserved by this Constitution, of the cities of Alexandria, Charlottesville, Danville, Fredericksburg, Lynchburg, Petersburg, Norfolk, Portsmouth, Richmond, Staunton, Manchester, Roanoke, Winchester, and Newport News, shall continue until the first day of February, nineteen hundred and seven; and the terms of the judges of the city courts, as preserved by this Constitution, of the cities of Bristol, Radford and Buena Vista, shall continue until the first day of February, nineteen hundred and four, unless the said courts shall be sooner abolished. The privilege now allowed by statute to judges of county courts and to judges of certain city courts to practice law, shall continue during the terms of the judges whose terms are continued by this Schedule, unless otherwise provided by law.

Sec. 8. The terms of the clerks of the county and circuit courts now in office, or their successors, shall continue until the first day of Feb-

ruary, nineteen hundred and four; and thereupon, the several clerks of the county courts in those counties in which such clerks are now *ex-officio* clerks of the circuit courts of said counties shall be and become the county clerks of their respective counties, and the clerks of all the other county courts of the State, except the counties of Accomac, Augusta, Bedford, Campbell, Elizabeth City, Fairfax, Lee, Loudoun, Hanover, Henrico, Rockingham, Nansemond, Southampton, Pittsylvania, Nelson, and Wythe, and, as such, the clerks of the circuit courts created therefor by this Constitution, and shall hold office as such until the first day of January, nineteen hundred and six, unless sooner removed, and their successors shall be elected on Tuesday after the first Monday in November, nineteen hundred and five; provided that the first term of the clerks so elected be for six years. In the counties of Accomac, Augusta, Bedford, Campbell, Elizabeth City, Fairfax, Lee, Loudoun, Hanover, Henrico, Rockingham, Nansemond, Southampton, Pittsylvania, Nelson, and Wythe, in which there are now separate clerks for the county and circuit courts thereof, there shall be elected on Tuesday after the first Monday in November, nineteen hundred and three, county clerks for such counties. The terms of the clerks now in office, or their successors, of the several city courts preserved by this Constitution, shall continue until the first day of January, nineteen hundred and seven; and their successors shall be elected on Tuesday after the first Monday in November, nineteen hundred and five; but if any of such city courts shall be sooner abolished as provided in this Constitution or by law, then the term of the clerk of any such court shall thereupon determine.

Sec. 9. The first election of the Governor and of all officers required by this Constitution, to be chosen by the qualified voters of the State at large, shall be held on the Tuesday after the first Monday in November, nineteen hundred and five, and their terms of office shall begin on the first day of February following their election. The present incumbents of said offices, or their successors, shall continue in office until the last-named day.

Sec. 10. The first election of members of the House of Delegates, and of all county and district officers, to be elected by the people under this Constitution, except as otherwise provided in this Schedule, shall be held on Tuesday after the first Monday in November, in the year nineteen hundred and three; and the terms of office of the several officers elected at that or any subsequent election shall begin on the first day of January, next after their election, except as otherwise provided in this Constitution or in this Schedule. And the terms of the office of the

sheriff, commonwealth's attorney, treasurer, commissioners of the revenue, superintendents of the poor, supervisors of the several counties, justices of the peace, and overseers of the poor, and of any incumbent of any other county or district office not abolished by this Constitution, nor herein specifically mentioned, now in office, or their successors, or whose terms of office shall begin on the first day of July, nineteen hundred and two, are continued until January the first, nineteen hundred and four.

The terms of the present members of the House of Delegates, and the terms of the senators now in office, or (in case of vacancies therein), their successors, representing the senatorial districts bearing even numbers, are extended until the second Wednesday in January, nineteen hundred and four; provided, that the term of the senator, now residing in the city of Richmond, who by the provisions of the apportionment act, approved April the second, nineteen hundred and two, is continued in office as one of the senators from the thirty-eighth senatorial district thereby created, be extended until the second Wednesday in January, nineteen hundred and six. The terms of the senators now in office, or (in case of vacancies therein), their successsors, representing the senatorial districts bearing odd numbers are extended until the second Wednesday in January, nineteen hundred and six.

In the senatorial districts bearing even numbers, there shall be elected, on the Tuesday after the first Monday in November, nineteen hundred and three, for a term of four years, to begin on the second Wednesday in January succeeding their election, members of the Senate to represent such districts; in the senatorial districts bearing odd numbers, and in the city of Richmond to fill the vacancy, which will, as above provided, occur on the second Wednesday in January, nineteen hundred and six, there shall be elected, on the Tuesday after the first Monday in November, nineteen hundred and five, for a term of two years, to begin on the second Wednesday in January succeeding their election, members of the Senate to represent such districts; and on the Tuesday after the first Monday in November, nineteen hundred and seven, there shall be elected, for the term of four years, to begin on the second Wednesday in January succeeding their election, a senator from each senatorial district in the State.

Sec. 11. All other state, county, and district officers, and their successors, who may be in office at the time this Constitution goes into effect, except the Auditor of Public Accounts, the Second Auditor, the Register of the Land Office, the Superintendent of Public Printing, the Commissioner of Labor and Industrial Statistics, Railroad Commissioner, nota-

ries public, the Adjutant-General, the Superintendent and the Surgeon of the Penitentiary, the Manager and the Surgeon of the State Prison Farm, the superintendents of the several state hospitals, and the school superintendents for counties and cities, and school trustees, shall, unless their respective offices be abolished, or unless otherwise provided by this Constitution or Schedule, hold their respective offices, and discharge the respective duties and exercise the respective powers thereof, until January the first, nineteen hundred and four. The terms of the present incumbents in the offices of Auditor of Public Accounts, Second Auditor, Register of the Land Office, Superintendent of Public Printing, and Commissioner of Labor and Industrial Statistics, shall continue until March the first, nineteen hundred and four. The term of the Railroad Commissioner shall end as soon as the State Corporation Commission shall be organized. Notaries public shall continue in office until their respective commissions shall expire. The term of the office of Adjutant-General shall expire March the first, nineteen hundred and six. The Superintendent and the Surgeon of the Penitentiary, the Manager and the Surgeon of the State Prison Farm, the superintendents of the several state hospitals, shall continue in office until their successors shall be appointed by the respective boards empowered under this Constitution to make the several appointments. The school superintendents for counties and cities shall remain in office for their respective terms, and until their successors are appointed. School trustees now in office, or their successors, shall remain in office until otherwise provided by law. Electoral boards with the powers conferred by existing laws, except the appointment of registrars, shall remain in office until March the first, nineteen hundred and four.

Sec. 12. The terms of the State Board of Education, the State Corporation Commission, and the Board of Agriculture and Immigration, the directors of public institutions and prisons, and of each state hospital, and the Commissioner of State Hospitals, to be first elected, or appointed, under this Constitution, shall begin on March the first, nineteen hundred and three. The board of any of the above-named departments and institutions as now constituted shall continue until the boards created under this Constitution for such departments and institutions respectively are duly organized. And the terms of the members of the Board of Fisheries are continued until March the first, nineteen hundred and six. The terms of the trustees or visitors of the state educational institutions, and other honorary appointments made by the Governor, are continued until otherwise provided by law.

Sec. 13. Charters of incorporation may, until the first day of April,

nineteen hundred and three, be granted or amended by the courts of the State in accordance with the laws in force when this Constitution goes into effect, unless the General Assembly shall sooner provide for the creation of corporations as required by this Constitution.

Sec. 14. The terms of all officers elected by the qualified voters of a city, and of their successors, in office at the time this Constitution goes into effect, or whose terms of office begin on the first day of July, nineteen hundred and two, except the terms of mayors, of members of city councils and of the clerks of city courts, are continued until January the first, nineteen hundred and six; and their successors shall be elected on the Tuesday after the first Monday in November, nineteen hundred and five. The terms of all city officers, not so elected, shall expire as provided in the charters of the several cities, or as may be provided by law.

Sec. 15. Until otherwise provided by law, the mayors of the several cities shall continue in office until September the first, nineteen hundred and four, and their successors shall be elected the second Tuesday in June, nineteen hundred and four. Until otherwise provided by law, the members of the several city councils shall continue in office for the terms prescribed in the charters of their respective cities, except that where their terms are prescribed as ending on the first day of July of any year, they shall be extended until the first day of September following.

Sec. 16. Vacancies in any office, the term of which is confirmed or extended by this Schedule, occurring during such term or extension thereof, shall be filled in the manner prescribed by law.

Sec. 17. All officers, whose terms of office are extended by this Schedule, required by law or municipal ordinance to give bond for the faithful discharge of the duties of their respective offices, shall, prior to the expiration of the terms for which they were respectively chosen, before the court or other authority before whom such officer was required by law or municipal ordinance to give such bond, enter into a new bond, in the same penalty and with such security as was prescribed by law or municipal ordinance in respect to his former bond, and with like conditions as therein prescribed, for the faithful discharge of the duties of his office for the extended term herein provided for, and until his successor shall have been duly chosen, and shall have qualified according to law. Upon failure to give such bond within the time above prescribed, the office shall, upon the expiration of the term for which the incumbent thereof was chosen, become vacant.

Sec. 18. In all elections held after this Constitution goes into effect,

the qualifications of electors shall be those required by Article Two of this Constitution.

Sec. 19. The General Assembly which convened on the first Wednesday in December, nineteen hundred and one, shall be called by the Governor to meet in session at the Capitol at twelve o'clock M., on Tuesday, the fifteenth day of July, nineteen hundred and two. It shall be vested with all the powers, charged with all the duties, and subject to all the limitations prescribed by this Constitution in reference to the General Assembly, except as to the limitation upon the period of its session, qualifications of members, and as to the time at which any of its acts shall take effect; but the ineligibility of the members thereof to be elected to any other office during their terms as members of the General Assembly shall be such as is imposed by this Constitution. The said General Assembly shall elect judges for all of the circuit courts provided for in this Constitution, and also of the corporation courts for Bristol, Radford, and Buena Vista, unless said city courts are sooner abolished.

Sec. 20. The said General Assembly shall enact such laws as may be deemed proper, including those necessary to put this Constitution into complete operation; to confirm those officers whose appointment is made by this Constitution subject to confirmation by the General Assembly or either house thereof; and to transact other proper business; and such session shall continue so long as may be necessary. The members shall receive for their services four dollars per day, for the time when the General Assembly is actually in session, including Sundays and recesses of not exceeding five days, and the mileage provided by law; the Speaker of the House of Delegates and President of the Senate shall each receive seven dollars per day for the same period and the mileage provided by law; and the other officers and employees shall receive such compensation for their services as the General Assembly may prescribe. Provision may be made for compensation at said rate of four dollars per day of members of legislative committees which may sit during any recess of said session.

Sec. 21. The compensation and duties of the Clerk of the House of Delegates and of the Clerk of the Senate shall continue as now fixed by law until the first of January, nineteen hundred and three, after which date their compensation shall be as prescribed by section Sixty-six of this Constitution.

Sec. 22. When the General Assembly convenes on the fifteenth day of July, nineteen hundred and two, its members and officers, before entering upon the discharge of their duties, shall severally take and

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subscribe the oath or affirmation prescribed by section Thirty-four of the Constitution. And not later than the twentieth day of July, nineteen hundred and two, the Governor and all other executive officers of the State, whose offices are at the seat of government, and all judges of courts of record, shall severally take and subscribe such oath or affirmation; and upon the failure of any such officer, executive or judicial, to take such oath by the day named, his office shall thereby become vacant. Such oaths or affirmations shall be taken and subscribed before any person authorized by existing laws to administer an oath. The Secretary of the Commonwealth shall cause to be printed the necessary blanks for carrying into effect this provision, and the said oaths and affirmations so taken and subscribed, except of the members and officers of the General Assembly, shall be returned to and filed in his office; and those taken by the members and officers of the General Assembly shall be preserved in the records of the respective houses.

Sec. 23. The official copy of the Constitution and Schedule, and of any ordinance adopted by the Convention, shall, as soon as they shall be enrolled, be signed by the President and attested by the Secretary of the Convention, and the President will thereupon cause the same to be delivered to the Secretary of the Commonwealth, who will file and preserve the same securely, among the archives of the State in his custody.

The Secretary of the Commonwealth will cause the Constitution, Schedule, and said ordinances to be transcribed in a book to be provided for the purpose and safely kept in his office.

The Secretary of the Convention will immediately upon the adoption of this Schedule, deliver a certified copy of the Constitution and Schedule, and of said ordinances, to the Governor of the Commonwealth.

Sec. 24. The Governor is authorized and directed to immediately issue his proclamation announcing that this revised and amended Constitution has been ordained by the people of Virginia, assembled in Convention, through their representatives, as the Constitution for the government of the people of the State, and will go into effect as such, subject to the provisions of the Schedule annexed thereto, on the tenth day of July, nineteen hundred and two, at noon, and calling upon all the people of Virginia to render their true and loyal support to the same, as the organic law of the Commonwealth.

Sec. 25. This Constitution shall, except as is otherwise provided in the Schedule, go into effect on the tenth day of July, nineteen hundred and two, at noon.

This Schedule shall take effect from its passage.

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AN ORDINANCE

To provide for the registration of voters under this Constitution, and prior to the year nineteen hundred and four (1904).

It is ordained as follows: Until the first day of January, nineteen hundred and four, all voters shall be registered in accordance with the requirements of this ordinance, as follows:

Section 1. Registration shall be conducted in each magisterial district of every county, and in each ward of every city, by a board of registrars, composed of three competent citizens, resident in such district or ward, appointed as hereinafter provided, each of whom shall qualify by signing and filing with the clerk of the county court of their respective counties, or the corporation court of their respective cities, as the case may be, a paper signifying their acceptance of their appointment, and who shall hold office until the first day of January, nineteen hundred and four; except that in the city of Bristol there shall be only one board, composed of three competent citizens thereof.

The board shall organize by electing one of its members chairman and another secretary of the board.

If any person appointed refuse or fail to qualify by the first day of August, nineteen hundred and two, or to serve, or if a vacancy occur in such board, the judge of the county court of the county, or of the corporation court of the city, shall by appointment supply the place or fill such vacancy; and such appointees shall qualify in the same manner as those appointed by this ordinance.

For attendance upon the sessions of the board, each member shall receive a compensation of two dollars per day. While actually engaged in the discharge of his official duties as to registration, each member of any such board shall have the authority and powers of conservators of the peace as defined by laws existing at the time this ordinance becomes operative.

Sec. 2. Prior to the fifteenth day of October, nineteen hundred and two, and again prior to the fifteenth day of October, nineteen hundred and three, there shall be a general registration in each of the counties, cities, and towns of the State; and each board of registrars for each district and ward, prior to each of the foregoing dates, shall convene and sit at some place and time to be designated by it in each precinct in its district or ward, at least one day, from eight o'clock in the morning to sunset in the counties, and from twelve o'clock noon to nine o'clock P. M. in cities and towns, and at such other places within the district or ward as may be convenient and necessary to complete the registration of the

voters. Each board may determine whether it will sit consecutively for the period hereafter stated, or whether it will sit from time to time for such number of days within said period as it may determine. At the registration to be held prior to the fifteenth day of October, nineteen hundred and two, the aggregate number of days in which any board shall sit within any one district or ward shall not exceed fifteen days; and at the registration to be had in the year nineteen hundred and three, the aggregate number of days in which any board shall sit within any one district or ward shall not exceed ten days. The judge of the county court of a county, or of a corporation court of a city, may, on the motion of the board, extend the time for either of such registrations for a further period or time to be determined by such judge, and shall fix the days for such registration.

The board shall give at least twenty days' notice of the time and place or places at which it will open books for registration at any precinct, by bills posted at five or more public places in the precinct, and also by weekly advertisement for two successive weeks in a newspaper, if one be published in the county or city, and in such other manner as it may deem expedient, and where the books are opened for more than one precinct, or for the whole district or ward, then like notice of the time and place shall be posted in five or more public places within each precinct, for which such registration is held, and advertised by publication as aforesaid.

Sec. 3. The board shall register all persons who apply for registration, entitled to register under this Constitution, prior to January the first, nineteen hundred and four, and none others; and it shall have power to administer oaths to, and examine under oath, any applicants and witnesses, and to receive evidence and hear testimony touching qualifications for registration.

The act of a majority of its members shall be the act of the board; and a majority of the members shall constitute a quorum for the transaction of all business.

Sec. 4. The board shall record in suitable books, hereinafter provided for, in alphabetical order, the names of all persons registered, the date of birth and registration, their occupation and residence. Separate books, in duplicate, for white and colored voters shall be kept for each precinct; one of each of which shall, after the completion of each registration, be forwarded by the chairman of the board to the clerk of the county court of the county, or of the corporation court of the city, to be copied in a proper book and preserved in his office.

Until January the first, nineteen hundred and four, the board shall have the custody and keeping of the other duplicate of said registration

books; but, a reasonable time before the elections to be held in nineteen hundred and two and nineteen hundred and three, the books for each precinct shall be delivered to the judges appointed at such precinct to conduct said elections, and they, a reasonable time after said elections, shall return the books to said board.

After the first day of January, nineteen hundred and four, the board shall deliver the registration books to the proper registration officers designated by law.

At the completion of every registration conducted by it, each member of the board shall sign, and certify the accuracy of the same on oath, upon the registration books.

Sec. 5. Until the first day of January, nineteen hundred and four, if any person so registered shall move to another precinct, he shall be entitled to register therein on the permanent roll, upon a transfer issued by the secretary of the board, before which he last registered; and a note of such transfer shall be made by the said secretary upon the permanent roll in his possession.

Sec. 6. Any person who, upon his examination, shall wilfully make a false statement of any material fact affecting his qualifications as a voter, shall be guilty of perjury, and, upon conviction thereof, shall forfeit for life his right to vote.

Sec. 7. Any person denied registration shall have the right to appeal, without payment of writ tax or giving security for costs, to the circuit court of the county or to the corporation court of the city, in which he offers to register, or to the judge thereof in vacation, by presenting to such court or judge, within ten days thereafter, a petition in writing to have his right to register determined, containing a statement of the facts proved before said board; to which the board shall make answer in writing. The matter shall be heard and determined upon such petition and answer, and such evidence as may be introduced in support thereof. Such proceedings shall take precedence over all other business of the said court or judge, and shall be heard as soon as possible.

Upon the filing of such petition, the clerk of the court shall at once give notice to the Commonwealth's attorney for his county or city, whose duty it shall be to appear and defend against said petition in behalf of the State.

Judgment in favor of the petitioner shall entitle him to registration. From judgment rendered against him, a writ of error shall lie to the Supreme Court of Appeals in favor the petitioner.

Sec. 8. The Secretary of the Commonwealth shall have prepared suitable books for the registration of voters and forward them to the clerk of the county court of each county, and to the clerk of the corporation

court of each city, to be by them distributed to the several boards of registrars of their respective counties and cities.

The books shall be so spaced and ruled as to provide for the convenient entry of the number and name of the voter, in alphabetical order, his age, occupation, residence, length of time he has resided in the State and county and precinct, and, if a naturalized citizen, the date of his naturalization papers and the court by which issued, if known; and, if registered as a voter exempt from the payment of a poll tax as a prerequisite to the right to vote, under section twenty-two of the Constitution, for the statement of that fact.

It shall be the duty of the Secretary of the Commonwealth, before the twentieth day of July, nineteen hundred and two, to forward to each of the persons chosen by the Convention as members of the several boards of registration, a certificate showing that such person has been so chosen, which certificate shall be evidence of the facts therein stated.

Upon the receipt of such certificate, the member of the registration board named therein shall signify his acceptance in writing to the clerk of his county, or the clerk of the hustings or corporation court of his city, upon blanks to be furnished by the Secretary of the Commonwealth.

The Secretary of the Commonwealth shall, with said certificate, send to each member of said board a copy of the Constitution and of this registration ordinance.

Sec. 9. On or before the first day of September, nineteen hundred and two, the treasurer of each county and city shall furnish to the board of registrars of each district or ward of his county or city, a certified list containing the names of all persons within such district or ward who, for the year nineteen hundred and one, have paid as much as one dollar in state tax for property owned by and assessed against them; and, on or before the first day of September, nineteen hundred and three, the said treasurers shall furnish to said boards a similar list of those who, for the year nineteen hundred and two, have paid as much as one dollar in state tax for property owned by and assessed against them.

Sec. 10. The books and blank forms to be prepared by the Secretary of the Commonwealth shall be provided at the expense of the State; but all other costs and charges of registration, including postage, stationery, and publication of notices, shall be defrayed by the counties and cities in which such registration is held.

Sec. 11. To conduct the registration provided for in this ordinance, the persons whose names appear below shall be, and they are hereby appointed, members of the board of registrars for the several magisterial districts and wards of the several counties and cities, as follows:

REGISTRATION BOARDS

ACCOMAC COUNTY.

Pungoteague Magisterial District,—William T. Mason, H. E. Wescott, William M. Turlington.

Lee Magisterial District,—Thomas C. Kellam, Robert P. Coleburn, Wilbur J. Milliner.

Metompkin Magisterial District,—Joseph R. Riggs, J. Harry Rew, Albert J. Rew.

Atlantic Magisterial District,—S. J. Revell, A. Clinton Matthews, James E. Anderton.

Islands Magisterial District,—John A. M. Wheelton, William J. Matthews, A. Frank Matthews.

ALBEMARLE COUNTY.

Scottsville Magisterial District,—James S. Harris, James Starke, T. E. Wilhoit.

Samuel Miller Magisterial District,—A. S. Watson, F. H. Via, C. E. Gay.

Whitehall Magisterial District,—Charles L. Wayland, Thomas White, William Z. Catterton.

Ivy Magisterial District,—S. A. Calhoun, Peter W. Garland, Henry G. White.

Charlottesville Magisterial District,—Bartlett Bolling, John H. Barksdale, M. R. Taylor.

Rivanna Magisterial District,—H. E. Magruder, William H. Bowcock, W. A. Marshall.

ALEXANDRIA COUNTY.

Washington Magisterial District,—William N. Febrey, George Ott Wunder, R. C. L. Moncure.

Arlington Magisterial District,—Curtis B. Graham, William Ball, W. W. Douglass.

Jefferson Magisterial District,—John W. Varney, Frank Hume, John W. Slater.

ALLEGHANY COUNTY.

Boiling Spring District,—C. B. Hunter, D. J. Callaghan, J. H. McDevitt.

Covington District,—W. A. Rinehart, H. A. Faulconer, W. E. Allen.

Clifton District,—George W. Warren, H. E. Meeks, Robert Robinson.

AMELIA COUNTY.

Leigh Magisterial District,—John T. Southall, C. C. Farley, George A. Wiley.

Giles Magisterial District,—W. E. Griffith, Bradley S. Johnson, N. W. de Krafft.

Jackson Magisterial District,—M. J. Oliver, E. N. Hamner, R. W. Blanton.

AMHERST COUNTY.

Amherst Courthouse Magisterial District,—C. B. Christian, B. R. Harrison, G. Frank Powell.

Temperance Magisterial District,—T. C. Payne, W. T. Watson, Ed. Lee Fulcher.

Pedlar Magisterial District,—T. B. Wood, H. R. Crist, M. B. Kyle.

Elon Magisterial District,—I. P. Whitehead, P. C. Cabell, W. E. Powell.

APPOMATTOX COUNTY.

South Side Magisterial District,—R. F. Burke, F. L. Martin, A. H. Howerton.
Clover Hill Magisterial District,—W. P. Gills, E. P. Sears, J. W. Clark.
Stonewall Magisterial District,—T. J. Stratton, C. H. Coleman, N. R. Featherstone.

AUGUSTA COUNTY.

South River Magisterial District,—C. Benton Coiner, John T. Smith, Samuel B. Harper.
North River Magisterial District,—E. G. Crist, M. Bruce Whitmore, C. H. Fulton.
Beverly Manor Magisterial District,—W. P. Gay, W. A. McComb, C. F. Neel.
Riverheads Magisterial District,—J. Marshall McClure, S. A. D. McKee, G. Lewis Clemmer.
Middle River Magisterial District,—James T. Kerr, Samuel H. McCue, John S. Richey.
Pastures Magisterial District,—James W. Seig, D. F. Hoover, John W. Montgomery.

BATH COUNTY.

Warm Springs Magisterial District,—S. W. Anderson, William M. McAllister, J. W. Harper.
Cedar Creek Magisterial District,—William G. Payne, C. W. Richardson, George H. Chaplin.
Crawford Mill Magisterial District,—Jasper N. Bradshaw, Robert M. McClintic, George W. Wallace.
Millboro Magisterial District,—John S. Dickinson, H. R. Lowman, Stonewall Jackson Armentrout.

BEDFORD COUNTY.

Central Magisterial District,—John M. Early, S. R. Watson, W. R. Abbot, Jr.
Lisbon Magisterial District,—F. C. Otey, H. L. Caldwell, Gordon Cofer.
Chamblissburg Magisterial District,—J. W. Nimmo, William H. Powers, Joseph P. Wright.
Staunton Magisterial District,—Pinckney Anthony, John W. Hubbard, C. E. Carter.
Otter Magisterial District,—Henan T. Witt, Thomas G. Read, William H. Wright.
Bellevue Magisterial District,—T. T. Patterson, Thomas W. White, J. P. Cannada.
Forest Magisterial District,—Amandus N. Walker, Jr., A. W. Scott, Wellington Ogden.
Charlemont Magisterial District,—William P. Burks, J. T. Noell, R. H. Parks.

BLAND COUNTY.

Sharon Magisterial District,—W. B. Allen, Wythe G. Waddle, Luther Scott.
Sedden Magisterial District,—R. C. Green, L. F. Grayson, Thomas Dunn.
Mechanicsburg Magisterial District,—W. H. G. Harmon, Meek Tickle, John C. Mustard.
Rocky Gap Magisterial District,—Frazier Stowers, John E. Shrader, George Stowers.

REGISTRATION BOARDS

BOTETOURT COUNTY.

Amsterdam Magisterial District,—Marshall Frantz, Thomas Gross, J. F. Gardner.

Fincastle Magisterial District,—C. W. Woltz, C. W. Rudisill, M. S. Cahoon.

Buchanan Magisterial District,—W. M. Brewbaker, U. H. Hyde, Charles L. Williamson.

BRUNSWICK COUNTY.

Powellton Magisterial District,—Ira W. Mitchell, S. P. Carpenter, A. S. Rawlings.

Meherrin Magisterial District,—P. H. Rawlings, G. B. Harris, N. S. Jones.

Red Oak Magisterial District,—John Haskins, U. S. Samford, S. J. Wallace.

Sturgeon Magisterial District,—D. C. Thomas, W. W. Doyle, James A. Browder.

Totaro Magisterial District,—W. T. Sledge, W. O. Lashley, S. E. Williams.

BUCHANAN COUNTY.

Grundy Magisterial District,—Alex. Runyons, W. P. McGlothin, John A. McClanahan.

Garden Magisterial District,—William B. McNiel, W. W. Horton, Emmett Combs.

Rock Lick Magisterial District,—Joseph L. Elswick, John W. Lee, Miles Elswick.

BUCKINGHAM COUNTY.

Mayesville Magisterial District,—J. T. Rogers, L. C. Moseley, P. A. Grigg.

Curdsville Magisterial District,—Mathew J. Cox, J. T. Bransford, J. W. Farley.

Slate River Magisterial District,—M. L. A. Moseley, Robert B. Agee, G. W. Patterson.

Marshall Magisterial District,—Robert H. Miller, T. R. Shaw, Julian Smith.

Francisco Magisterial District,—W. C. Trent, J. O. Morris, E. C. Wooldridge.

James River Magisterial District,—J. E. Carter, W. P. Ellis, Price Glover.

CAMPBELL COUNTY.

Rustburg Magisterial District,—Frank Nelson, Adam Clement, G. A. Coleman.

Seneca Magisterial District,—Mark Anthony, R. C. Hawkins, W. T. Oaks.

Falling River Magisterial District,—L. C. Asher, Thomas Whately, R. E. Musgrove.

Otter River Magisterial District,—Thomas Dillard, Clark M. Kabler, W. W. Driscoll.

Brookville Magisterial District,—H. C. Featherstone, N. J. Floyd, J. T. Falwell.

CAROLINE COUNTY.

Madison Magisterial District,—D. J. Waller, G. Allensworth, W. M. Oliver.

Reedy Church Magisterial District,—Clarence Bowers, Arch Samuel, T. R. Campbell.

Bowling Green Magisterial District,—S. W. Broaddus, Eugene Pitts, J. H. Martin.

Port Royal Magisterial District,—J. B. Washington, C. B. Conway, R. C. Thornton.

CARROLL COUNTY.

Pine Creek Magisterial District,—James Dalton, George W. Hyatt, S. A. Smith.

Laurel Fork Magisterial District,—C. M. Marshall, W. L. Utt, Franklin Branscome.

Fancy Gap Magisterial District,—M. T. C. Mitchell, Friel Hawks, John A. Jones.

Piper Gap Magisterial District,—Thomas J. Huffman, E. P. Givens, James W. Edwards, Jr.

Sulphur Springs Magisterial District,—Adonijah Lineberry, W. K. Early, Norman Gwynn.

CHARLES CITY COUNTY.

Harrison Magisterial District,—L. A. Marston, W. D. Barnett, Allen Walker.

Tyler Magisterial District,—Thomas W. Wilcox, Thomas L. Christian, John R. Waddill.

Chickahominy Magisterial District,—E. H. Slater, Stanley Parsons, W. L. Wilkinson.

CHARLOTTE COUNTY.

Madison Magisterial District,—John D. Shepperson, Walter S. Pugh, G. W. Berkley.

Walton Magisterial District,—James C. Watkins, Lee W. Morton, J. H. Priddy.

Bacon Magisterial District,—Berkley D. Adams, Stith Barksdale, Charles M. Broocks.

Roanoke Magisterial District,—Frank B. Watkins, Henry W. Harvey, Henry C. Marshall.

Midway Magisterial District,—W. G. Cabannis, J. W. Gilchrist, T. A. Wilkes.

CHESTERFIELD COUNTY.

Dale Magisterial District,—John Penn Taylor, E. A. Swineford, A. J. Gill.

Clover Hill Magisterial District,—Julian A. Salle, Wilfred Ira Robertson, Lucius A. Sims.

Midlothian Magisterial District,—Selwyn Hancock, John A. Lester, C. G. Whitworth.

Matoaca Magisterial District,—W. A. Blankingship, R. E. Eanes, Waverly S. Ivey.

Manchester Magisterial District,—B. P. Owen, Jr., Daniel Bliley, L. W. Cheatham.

Bermuda Magisterial District,—Charles N. Friend, D. M. Walker, Samuel L. Perdue.

CLARKE COUNTY.

Greenway Magisterial District,—George C. Meade, Turner Russell, M. H. Reardon.

Chapel Magisterial District,—A. V. Neville, Samuel J. Wiley, Charles Jones.

Battletown Magisterial District,—George C. Shepherd, Thomas Elsea, J. H. Powers.

Long Marsh Magisterial District,—B. F. Foley, F. H. Pierce, William McDonald.

CRAIG COUNTY.

Newcastle Magisterial District,—Samuel L. Ruble, William A. Charlton, James H. Caldwell.

Alleghany Magisterial District,—Daniel L. Huffman, Robert A. Eakin, W. P. B. Lipes.

Simmonsville Magisterial District,—Albert Troutt, A. McHenry Caldwell, Miles L. Givens.

CULPEPER COUNTY.

Stevensburg Magisterial District,—Leon Nalle, John M. Shackelford, D. Wright Kelly.

Cedar Mountain Magisterial District,—Daniel A. Slaughter, James W. Garnett, W. Alexander Taliaferro.

Catalpa Magisterial District,—Lewis P. Nelson, Jr., John R. Duncan, Alex-K. Wood.

Salem Magisterial District,—John M. Lewis, Frederick E. Porter, Thomas C. Howard.

Jefferson Magisterial District,—W. G. Crigler, F. L. Campbell, Robert R. Duncan.

CUMBERLAND COUNTY.

Randolph Magisterial District,—B. W. L. Blanton, A. J. Smith, Thornton Holman.

Madison Magisterial District,—Paul McRae, W. L. Guthrie, Jr., J. L. Foster.

Hamilton Magisterial District,—E. J. Harrison, W. J. Jennings, C. R. Saunderson.

DICKINSON COUNTY.

Clintwood Magisterial District,—John W. Kerr, N. B. French, W. L. Brown.

Willis Magisterial District,—J. M. Artrip, S. H. Senter, George Davis.

Ervington Magisterial District,—R. W. Ervin, H. K. Hillman, David Smith, Sr.

Kenady Magisterial District,—Ira Boggs, John W. Hill, Robert Lee Mullins.

Sand Lick Magisterial District,—T. K. Colly, R. D. Sutherland, K. L. Colly.

DINWIDDIE COUNTY.

Rowanty Magisterial District,—John Y. Harris, James W. Boisseau, William F. Baugh.

Namozine Magisterial District,—J. C. Smith, Andrew Meade, H. C. Lovett.

Darvilles Magisterial District,—E. S. Hobbs, E. W. Hudgins, J. A. Frayser.

Sapony Magisterial District,—E. C. Powell, C. E. Abernathy, J. P. Atkinson.

ELIZABETH CITY COUNTY.

Chesapeake Magisterial District,—H. H. Holt, LeGrande Donohoe, David Johnson.

Hampton Magisterial District,—S. Gordon Cumming, F. W. Sheild, J. Wilton Hope.

Wythe Magisterial District,—Sidney J. Dudley, T. H. Parramore, Scott Wood.

ESSEX COUNTY.

Occupacia Magisterial District,—W. A. Gresham, Henry Waring, B. B. Spindle.

Central Magisterial District,—R. C. McDonald, B. C. Rennolds, C. S. Smith.
Rappahannock Magisterial District.—R. G. Carnthorn, R. H. Seward, R. H. Dillard.

FAIRFAX COUNTY.

Falls Church Magisterial District,—George Auld, James M. Mason, George A. Brunner.
Providence Magisterial District,—W. P. Moncure, R. E. Berry, John R. Stuart.
Dranesville Magisterial District.—J. H. Hurst, George W. Gunnell, Robert L. Harrison.
Centerville Magisterial District,—James P. Machen, Sr., J. R. M. Gheen, John M. Ford.
Mount Vernon Magisterial District,—R. C. Triplett, R. W. Gaillard, Frank Reid.
Lee Magisterial District,—Henry D. Rice, Frank Wooster, John W. Raney.

FAUQUIER COUNTY.

Centre Magisterial District,—L. C. Andrews, W. F. Follin, R. C. Murphy.
Scott Magisterial District,—H. H. Hulfish, H. S. Haines, W. A. Rucker.
Marshall Magisterial District,—R. I. Russell, John M. Ashby, Ogden Wood.
Lee Magisterial District,—W. S. Herroll, T. T. Jones, John K. Taliaferro.
Cedar Run Magisterial District,—W. O. Bower, S. M. Lomax, H. P. Waite.

FLOYD COUNTY.

Courthouse Magisterial District,—William Pendleton, L. W. Hylton, Charles Thomas.
Burks Fork Magisterial District,—C. F. Page, W. H. Willis, J. E. Burwell.
Indian Valley Magisterial District,—H. C. Hall, Henry Strong, J. L. Kenley.
Alum Ridge Magisterial District,—H. H. Earles, H. M. Boothe, Wade Thompson.
Little River Magisterial District,—W. H. Harman, T. L. Robinson, B. Dickerson.
Locust Grove Magisterial District,—W. L. Reed, J. H. Shockey, T. H. Walters.

FLUVANNA COUNTY.

Columbia Magisterial District,—James McC. Miller, John W. Holland, R. C. Bowles.
Palmyra Magisterial District,—J. Flint Omohundro, J. Walter Shiflett, George Minor Winn.
Fork Union Magisterial District,—R. J. Snead, A. S. Burgess, Virgil Anderson.
Cunningham Magisterial District,—B. W. Taylor, W. J. Kent, M. G. Davis.

FRANKLIN COUNTY.

Rocky Mount Magisterial District,—W. T. McGhee, C. P. Preston, W. D. Martin.
Snow Creek Magisterial District,—T. J. Belcher, Thomas D. Frith, W. P. F. Lee.
Union Hall Magisterial District,—D. H. Berger, Charles Hodges, W. D. Haynes.
Gills Creek Magisterial District,—A. W. Hutcherson, J. H. Ferguson, L. M. Wright.
Boubrook Magisterial District,—R. A. Lovelace, M. D. Martin, John H. Moore.

Little Creek Magisterial District,—Tazewell Helms, J. W. Angell, Leslie Bell.
Maggodee Magisterial District,—J. O. Abshire, C. W. Mills, Berkley Price.
Blackwater Magisterial District,—E. C. Akers, C. T. Jamison, William E. Price.
Long Branch Magisterial District,—Hughes D. Cannady, S. T. Thomas, W. A. Thompson, Jr.
Brown Hill Magisterial District,—S. J. Prillaman, C. L. Ross, D. A. Nicholson.

FREDERICK COUNTY.

Shawnee Magisterial District,—John M. Silver, David Carpenter, R. J. Wigginton.
Opequan Magisterial District,—Briscoe Shull, W. T. Birmingham, Hugh Funk.
Back Creek Magisterial District,—T. W. Morrison, Meredith Anderson, J. W. Himmelwright.
Gainsboro Magisterial District,—R. L. Omps, Jonah Tavenner, John W. Harper.
Stonewall Magisterial District,—Clark Purcell, A. Pine, William Timberlake.

GILES COUNTY.

Pearisburg Magisterial District,—E. S. Dennis, S. W. Preston, Charles D. French.
Pembroke Magisterial District,—Albert Angel, Harve Phlegar, Arthur Snidow.
Walker's Creek Magisterial District,—S. B. Shannon, S. R. Crockett, T. S. Taylor.
Newport Magisterial District,—G. T. Porterfield, Albert Price, John S. Dowdy.

GLOUCESTER COUNTY.

Petsworth Magisterial District,—T. F. Perry, W. C. Stubbs, J. D. Stubbs.
Ware Magisterial District,—W. A. Robins, A. M. Pointer, Rex Hinkle.
Abingdon Magisterial District,—J. T. Mills, H. L. Bridges, J. W. Pointer.

GOOCHLAND COUNTY.

Dover Magisterial District,—Henry S. Holland, J. V. Bowles, Leroy D. Ellis.
Licking Hole Magisterial District,—David B. Harris, Julian Kean, H. H. Hoye.
Byrd Magisterial District,—James M. Trice, Robert Fisher, Arthur W. James.

GRAYSON COUNTY.

Elk Creek Magisterial District,—W. M. Warren, F. H. Ward, E. Scott Hale.
Wilson Magisterial District,—J. A. Phipps, A. N. Hash, A. W. Wagg.
Old Town Magisterial District,—Andrew Carico, And. J. Higgins, W. R. Duffhey.

GREENE COUNTY.

Standardsville Magisterial District,—E. D. Davis, B. P. Runkle, George W. Shelton.
Ruckersville Magisterial District,—R. B. Simpson, J. D. Yowell, John E. Douglas.
Monroe Magisterial District,—Thomas J. Chapman, John D. Early, J. H. Williams.

GREENESVILLE COUNTY.

Belfield Magisterial District,—R. H. Short, Henry Maclin, J. E. Everet.
Hicksford Magisterial District,—J. H. Robinson, J. J. Garner, J. F. Powell
Zion Magisterial District.—Harry Taylor, J. H. Lifsey, Ernest Lashly.

HALIFAX COUNTY.

Banister Magisterial District,—S. J. Slate, J. M. Carrington, W. Holt Edmunds.
Meadsville Magisterial District,—Armstead Barksdale, Jr., J. Carter Glass, T. E. Dickerson.
Mt. Carmel Magisterial District,—A. E. Wilkins, A. A. Owen, J. H. Brandon.
Red Bank Magisterial District,—W. W. Tuck, John T. Torian, R. A. Singleton.
Birch Creek Magisterial District,—C. D. Barksdale, E. B. Wimbish, S. T. A. Kent.
Roanoke Magisterial District,—C. A. Gregory, Howell C. Lacy, Tucker C. Watkins.
Staunton Magisterial District,—John W. Cousins, E. Y. Wimbish, T. F. DeJarnette.
Black Walnut Magisterial District,—W. C. Slate, G. T. Crowder, C. M. Jordon.

HANOVER COUNTY.

Beaver Dam Magisterial District,—William D. Wickham, John Campbell, H. C. Redd.
Ashland Magisterial District,—M. P. Howard, W. C. Taylor, H. L. Quarles.
Henry Magisterial District,—F. H. Holladay, Thomas R. Puller, F. S. Beale.

HENRICO COUNTY.

Varina Magisterial District,—John A. Archer, A. L. Cornwell, Thomas Guy.
Tuckahoe Magisterial District,—H. B. Haley, L. P. Michaels, John T. Nuckols.
Fairfield Magisterial District,—Thomas J. Carter, W. T. Crawford, Hugh D. Smith.
Brookland Magisterial District,—Marshall F. Burton, Harvie D. Goddin, J. W. Penick.

HENRY COUNTY.

Martinsville Magisterial District,—C. B. Bryant, H. W. Jamerson, W. H. Hairston.
Ridgeway Magisterial District,—J. B. C. Ambrose, L. A. Starling, A. B. Poindexter.
Horse Pasture Magisterial District,—W. B. Clark, S. W. Marshall, D. M. Fry.
Leatherwood Magisterial District,—T. G. Minter, J. M. Eanes, M. E. Minter.
Reed Creek Magisterial District,—Thomas R. Winn, George W. Davis, Sr., John W. Miles.
Irisburg Magisterial District,—H. M. Land, D. F. Dunlop, W. G. Gravely.

HIGHLAND COUNTY.

Stonewall Magisterial District,—John O. Armstrong, W. R. Siron, H. T. Bradshaw.
Monterey Magisterial District,—S. B. Seig, John A. Whitelaw, Don. Sullenberger.
Blue Grass Magisterial District,—John K. Kramer, E. W. Armstrong, Samuel A. Gilmore.

ISLE OF WIGHT COUNTY.

Windsor Magisterial District,—R. B. White, Jack Saunders, C. F. Joyner.
Newport Magisterial District,—J. E. White, John W. Gray, George H. Parker.
Hardy Magisterial District,—Turner S. Reynolds, W. D. Gwaltney, William E. Howle.

JAMES CITY COUNTY.

Jamestown Magisterial District,—Jacob Vaiden, William Lee, B. S. Scott, Jr.
Stonehouse Magisterial District,—R. E. Taylor, D. W. Marston, George W. Bacon.
Powhatan Magisterial District,—H. W. Wynne, Joseph Bush, F. C. Stewart.

KING GEORGE COUNTY.

Rappahannock Magisterial District,—H. Potts, Henry Hunter, Allen Smith.
Potomac Magisterial District,—H. T. Garnett, R. W. Coakley, Dangerfield Ashton.
Shiloh Magisterial District,—J. G. Taliaferro, C. H. Purks, Alexander Pratt.

KING AND QUEEN COUNTY.

Newton Magisterial District,—R. D. Bates, J. R. Fleet, W. S. Hill.
Stevensville Magisterial District,—I. F. Drain, R. D. Allen, A. H. Eubank.
Buena Vista Magisterial District,—Llewellyn Courtney, H. W. Bland, J. R. F. Vaughan.

KING WILLIAM COUNTY.

West Point Magisterial District,—Henry Corr, I. H. Richards, I. B. Green.
Acquinton Magisterial District,—William Edwards, John H. Haw, A. B. Willis.
Mangohick Magisterial District,—Joseph H. Gwathmey, M. D. Sizer, John R. Redd.

LANCASTER COUNTY.

White Stone Magisterial District,—Joseph B. Cralle, William M. Kirk, Frank G. Newbill.
Mantua Magisterial District,—William J. Barker, Herbert P. Hall, Robert O. Norris, Jr.
White Chapel Magisterial District,—William H. Jesse, James P. Saunders, William A. Saunders.

LEE COUNTY.

Rose Hill Magisterial District,—James H. Humphreys, T. S. Snavely, John P. Speak.
White Shoals Magisterial District,—John F. Headen, Josephus Grabeel, James B. Smith.
Jonesville Magisterial District,—C. P. Brown, J. P. Albert, Charles J. Robinett.
Rocky Station Magisterial District,—James M. Durham, A. K. McClure, James B. Kirk.
Yokum Station Magisterial District,—J. B. Wolfe, J. K. P. Barron, James Smith.

LOUDOUN COUNTY.

Broad Run Magisterial District,—W. L. Ferguson, Converse Bridges, J. W. Johnson.

Jefferson Magisterial District,—F. J. Beans, J. O. Potts, G. G. Gregg.

Mount Gilead Magisterial District,—W. A. McFarland, J. R. Marshall, J. B. Vansickler.

Mercer Magisterial District,—W. R. Keelen, John D. Moore, Henry Saffe.

Lovettsville Magisterial District,—H. T. Potterfield, C. W. Everhart, Hampton Virts.

Leesburg Magisterial District,—C. F. Daily, J. E. Kidwell, William Gaines.

LOUISA COUNTY.

Green Springs Magisterial District,—William McComb, William Overton, J. W. Flanagan.

Louisa Courthouse Magisterial District,—N. T. Garth, Romulus Poore, Frederick Kean.

Cuckoo Magisterial District,—William Kean, Robert N. Harris, T. E. Beckham.

Jackson Magisterial District,—R. A. Trice, Anthony Goodwin, George F. Harrison.

LUNENBURG COUNTY.

Loch Leven Magisterial District,—Wellington Featherston, S. J. Hite, Walter Neblett.

Columbian Grove Magisterial District,—R. Lee Thomas, W. H. Hawthorne, S. H. Love.

Brown's Store Magisterial District,—Theodore Orgain, Garland Bailey, L. J. Hamlin.

Lewiston Magisterial District,—J. T. Waddill, Lula Gee, Austin Fowlkes.

Rehoboth Magisterial District,—W. A. Bigger, S. A. Harding, E. J. Gregory.

Pleasant Grove Magisterial District,—W. N. Love, W. Y. Fowlkes, J. A. Shackleton.

MADISON COUNTY.

Robertson Magisterial District,—Charles O. Simms, J. N. Clore, J. L. Fray.

Rapidan Magisterial District,—C. E. Kite, John W. Price, W. L. Payne.

Locust Dale Magisterial District,—Lester Hill, C. D. Twyman, John B. Graves.

MATHEWS COUNTY.

Chesapeake Magisterial District,—F. W. Jarvis, J. A. Weston, Alexander James.

Westville Magisterial District,—John J. Burke, R. L. McCready, B. M. Diggs.

Piankitank Magisterial District,—Stephen Adams, Charles S. Williams, Frank R. Landon.

MECKLENBURG COUNTY.

Boydton Magisterial District,—James L. Toon, H. L. Turpin, R. R. Jeffreys.

Blue Stone Magisterial District,—M. Garnette Russell, T. Y. Allen, Henry A. Walker.

Chase City Magisterial District,—Lucius Gregory, J. Jordan Mason, T. E. Roberts.

Buckhorn Magisterial District,—H. L. Petty, S. B. Johnson, James P. Reekes.

South Hill Magisterial District,—John E. Mathews, Robert J. Northington, B. B. Smith.

Flat Creek Magisterial District,—W. Andrew Elam, W. R. Baskervill, Richard A. Elam.

Palmer's Springs Magisterial District,—S. L. Graham; E. L. Haskins, George L. Hayes.

Clarksville Magisterial District,—Lewis B. Gilliland, Jr., R. W. Elam, J. O. Rainey.

MIDDLESEX COUNTY.

Jamaica Magisterial District,—W. E. Kain, George R. Northam, Burke Richardson.

Saluda Magisterial District,—John R. Ferneyhough, Herbert L. Smither, R. B. Segar.

Pine Top Magisterial District,—E. W. Bristow, F. E. Topping, James Grennels.

MONTGOMERY COUNTY.

Alleghany Magisterial District,—E. H. Taylor, Edward D. Colhoun, D. C. Lancaster.

Auburn Magisterial District,—P. H. Kinser, Warren L. Carper, John Sarles.

Blacksburg Magisterial District,—Byrd Anderson, J. R. K. Cowan, Howe Brown.

Christiansburg Magisterial District,—Jesse A. Miller, R. D. M. Charlton, G. W. Fagg.

NANSEMOND COUNTY.

Sleepy Hole Magisterial District,—James Arthur, John S. Bond, Reginald Wright.

Chuckatuck Magisterial District,—James P. Rives, C. F. Pinner, A. W. Ballard.

Holy Neck Magisterial District,—E. B. Britt, J. K. P. Daughtrey, John F. Rawls.

Cypress Magisterial District,—M. F. Lloyd, A. C. Milteer, Fairlee Brinkly.

NELSON COUNTY.

Lovingston Magisterial District,—John L. Snead, T. B. M. Perkins, Coleman J. Cabell.

Massie's Mill Magisterial District,—George W. Whitehead, John I. Loving, William H. Hight.

Rockfish Magisterial District,—Hudson Martin, T. L. Kent, Jr., W. N. West.

NEW KENT COUNTY.

Black Creek Magisterial District,—R. W. Hollins, J. R. Dobson, Gregory W. Fisher.

St. Peter's Magisterial District,—J. P. Smithie, George Sweet, George Mountcastle.

Cumberland Magisterial District,—R. D. Cook, Norwood Apperson, H. C. Taylor.

Ware Creek Magisterial District,—Sylvanus Goddin, Robert Boswell, William F. Martin.

NORFOLK COUNTY.

Washington Magisterial District,—M. C. Keeling, J. P. Jackson, Edmund Christian.

Butt's Road Magisterial District,—George S. Fentress, W. B. Keeling, L. F. Cason.

Pleasant Grove Magisterial District,—John T. West, W. C. Wood, H. W. West.

Deep Creek Magisterial District,—S. W. Gary, John G. McCoy, W. W. Harris.

Western Branch Magisterial District,—George Lindsay, J. W. Bidgood, C. W. Coleman.

Tanner's Creek Magisterial District,—E. W. Savage, J. F. Coleman, Edward Holland.

NORTHAMPTON COUNTY.

Franktown Magisterial District,—J. Alma Smith, George H. Thomas, Thomas T. Upshur.

Eastville Magisterial District,—G. Frederick Floyd, Philip A. Fitzhugh, Benjamin Thomas.

Capeville Magisterial District,—George B. Taylor, William D. Williams, Jesse S. Nottingham.

NORTHUMBERLAND COUNTY.

Lottsburg Magisterial District,—Giles F. Eubank, Slater Cowart, Charles U. Warner.

Heathsville Magisterial District,—J. A. Rice, W. D. Cockrell, Samuel E. Headley.

Fairfields Magisterial District,—J. W. Tankard, Morean Blackwell, A. F. Rice.

Wicomico Magisterial District,—Edgar Blackwell, Warner Hurst, Oscar Kent.

NOTTOWAY COUNTY.

Bellefonte Magisterial District,—Richard Belville, B. E. Cobb, Irby Moncure.

Blendon Magisterial District,—John B. Tuggle, Thornton Jeffress, C. D. Epes.

Winningham Magisterial District,—W. T. Warriner, E. F. Lockett, D. P. McCormick.

Haytokah Magisterial District,—W. H. Jeffress, J. L. Vaughan, William B. Green.

ORANGE COUNTY.

Barbour Magisterial District,—Bennett Bledsoe, George E. Head, E. R. Rohr.

Madison Magisterial District,—W. O. Blakey, R. D. Browning, E. C. Cook.

Taylor Magisterial District,—P. L. Jackson, G. E. Waugh, James Duncan.

Gordon Magisterial District,—P. M. Gibbs, Lindsay Almond, T. B. Morris.

PAGE COUNTY.

Shenandoah Iron Works Magisterial District,—Thomas M. Keyser, George A. Keyser, Isaac Shuler.

Marksville Magisterial District,—Thomas J. Graves, John H. Cave, J. W. Long.
Luray Magisterial District,—R. C. Bragonier, N. B. Smith, John A. Ellis.
Springfield Magisterial District,—W. H. Griffith, L. C. Kibler, George W. Keyser.

PATRICK COUNTY.

Mayo River Magisterial District,—R. L. Joyce, J. R. Boaz, John P. Tatum.
Dan River Magisterial District,—R. H. Dunkley, D. G. Smith, S. G. Dobyns.
Smith's River Magisterial District,—A. C. Turner, William P. Thompson, J. F. Reynolds.

PITTSYLVANIA COUNTY.

Banister River Magisterial District,—H. P. Ferguson, Samuel F. Brown, Samuel R. Stone.
Callands Magisterial District,—James M. Francis, H. E. Clements, M. A. Parrish.
Chatham Magisterial District,—J. Lawson Carter, James A. Davis, Henry C. Allen.
Dan River Magisterial District,—Jesse I. White, Edward Williams, R. L. Dodson.
Pigg River Magisterial District,—A. C. Owen, C. Q. Edwards, W. Tazewell Jefferson.
Staunton River Magisterial District,—H. Clay Harvie, Samuel L. Smith, John D. Glenn.
Tunstall Magisterial District,—Samuel H. Boyd, B. F. Garrett, Thomas J. Robertson.

POWHATAN COUNTY.

Hugenot Magisterial District,—William A. Winfree, David E. Harris, S. Lee Dance.
Spencer Magisterial District,—Enders Word, James Polk Simpson, R. R. Lee.
Macon Magisterial District,—George S. Hurt, James P. Steger, Joseph Hobson.

PRINCE EDWARD COUNTY.

Hampden Magisterial District,—R. E. Stokes, Samuel Lacy, George W. Redd.
Lockett Magisterial District,—B. H. Ligon, W. L. Clark, E. T. Bondurant.
Farmville Magisterial District,—A. R. Venable, Jr., W. H. Richardson, Peter Winston.
Leigh Magisterial District,—J. J. Gilliam, W. S. Dance, L. D. Jones.
Buffalo Magisterial District,—J. P. Glenn, Charles A. Morton, W. B. Binford.

PRINCE GEORGE COUNTY.

Templeton Magisterial District,—C. N. Lee, Thomas Temple, J. H. Hatch, Jr.
Rives Magisterial District,—R. T. Reese, W. H. C. Spicer, Frank B. McCann.
Blackwater Magisterial District,—T. A. Brown, F. A. Epps, J. C. Fenn.
Bland Magisterial District,—George J. Boisseau, J. F. James, Thomas A. Munt.
Brandon Magisterial District,—Mann Page, George T. Darricott, N. H. Burrow.

PRINCESS ANNE COUNTY.

Kempsville Magisterial District,—T. H. Hoggard, Walter H. Smith, Grandy L. Jackson.
Seaboard Magisterial District,—C. T. Chaplain, W. T. Braithwaite, A. Sawyer Woodhouse.
Pungo Magisterial District,—W. J. Craft, J. J. Whitehurst, E. T. Humphries.

PRINCE WILLIAM COUNTY.

Dumfries Magisterial District,—J. F. Wheat, E. G. W. Keys, D. C. Alexander.
Occoquan Magisterial District,—John S. Powell, E. P. Davis, W. B. Glascock.
Coles Magisterial District,—Samuel R. Lowe, Jr., John S. Storke, George M. Goodwin.
Brentsville Magisterial District,—D. P. Edmonds, J. P. Manuel, John A. Brawner.
Manassas Magisterial District,—William N. Lipscomb, David J. Arrington, William M. Wheeler.
Gainesville Magisterial District,—George G. Galleher, A. H. Johnson, William H. Brown.

PULASKI COUNTY.

Pulaski Magisterial District,—J. B. Caddall, C. B. Tate, J. D. Askew.
Newbern Magisterial District,—J. R. Micou, J. A. Pratt, D. M. Painter.
Dublin Magisterial District,—W. W. Hawkins, W. H. Ricketts, W. A. Chumbley.
Hiawassie Magisterial District,—F. I. Smith, Robert Vaughn, A. M. Graham.

RAPPAHANNOCK COUNTY.

Wakefield Magisterial District,—Judson Browning, C. C. Eastham, Robert H. Ricketts.
Jackson Magisterial District,—J. J. Silvey, John Hunton Wood, M. Ritenour.
Hampton Magisterial District,—J. B. Wood, B. R. Miller, Charles Green.
Piedmont Magisterial District,—James H. Fletcher, Carroll Menefee, P. H. O'Bannon.
Hawthorne Magisterial District,—Robert Vanhorn, J. J. Miller, John Coats.
Stonewall Magisterial District,—Charles Browning, J. G. Brown, G. B. Mason.

RICHMOND COUNTY.

Stonewall Magisterial District,—A. A. Taliaferro, G. W. Balderson, T. D. Marks.
Marshall Magisterial District,—G. M. Sydnor, J. F. Garland, W. Y. Morgan.
Washington Magisterial District,—P. Y. Barber, B. B. Griffith, W. A. Bryant.
Farnham Magisterial District,—J. L. Motley, R. C. Lumpkin, W. H. Rice.

ROANOKE COUNTY.

Big Lick Magisterial District,—W. G. Wood, G. W. Gish, M. L. Fellers.
Catawba Magisterial District,—N. D. Barnett, E. C. Thomas, D. H. Shelor.

Cave Spring Magisterial District,—J. Coles Terry, L. L. Greenwood, John Persinger.

Salem Magisterial District,—O. L. Stearns, A. O. Brown, H. B. Pleasants.

ROCKBRIDGE COUNTY.

South River Magisterial District,—W. T. Moore, C. J. Bell, J. H. McCormick.

Lexington Magisterial District,—S. B. Walker, G. A. Jones, W. T. Tolley.

Kerr's Creek Magisterial District,—Daniel Teaford, Charles Lindsay, D. H. Hart.

Buffalo Magisterial District,—J. W. Saville, A. H. Wilson, J. A. Wilkinson.

Natural Bridge Magisterial District,—J. W. Burger, J. H. Overton, W. A. Mohler.

Walker's Creek Magisterial District,—J. B. Wood, Ham Wade, J. F. Deacon.

ROCKINGHAM COUNTY.

Ashby Magisterial District,—Peter C. Tutweiler, Joseph F. Craun, Joseph G. Meyers.

Linville Magisterial District,—Joseph L. Humbert, David Wenger, David M. Hollar.

Plains Magisterial District,—John W. Harrison, Charles E. Fahrney, Charles S. Wunder.

Stonewall Magisterial District,—John W. Blackburn, Joseph A. Hammen, S. M. Yancey.

Central Magisterial District,—J. W. Sheets, George R. Eastham, George G. Herring.

RUSSELL COUNTY.

Lebanon Magisterial District,—J. J. Gilmer, A. F. Hurt, W. H. Fuller.

Elk Garden Magisterial District,—H. W. Martin, Sylvester Albert, Charles W. Belcher.

New Garden Magisterial District,—Boston Steele, Thomas P. Robinson, M. H. Burnett.

Cleveland Magisterial District,—J. S. Tate, Richard D. Smith, Lilburn Finney.

Castlewood's Magisterial District,—John T. Candler, Robert Cooper, W. C. Grigsby.

Copper Creek Magisterial District,—E. M. Ireson, Joseph W. Bostick, Henry Steele.

Moccasin Magisterial District,—John Hanson, Cline Tate, Edward Kitchen.

SCOTT COUNTY.

Estillville Magisterial District,—Ezra Carter, J. L. Shelton, John M. Jennings.

Fulkerson Magisterial District,—George W. Latture, J. H. Hylton, Joel Shelly.

Johnson Magisterial District,—James H. Shoemaker, John F. McConnell, Charles W. Bond.

Floyd Magisterial District,—Patrick Hagan, Jr., Floyd Osborn, B. T. Culberson.

Dekalb Magisterial District,—James M. Harris, W. P. Ramey, W. B. Franklin.
Taylor Magisterial District,—S. L. Cox, Rufus Kilgore, J. F. Richmond.
Powell Magisterial District,—C. C. Johnson, C. C. Palmer, Roten Hurst.

SHENANDOAH COUNTY.

Lee Magisterial District,—G. A. Guard, B. F. Garber, D. Saylor Neff.
Madison Magisterial District,—E. T. Smith, A. B. Clinedinst, J. W. Hollar.
Johnson Magisterial District,—J. A. Dysart, William Keller, Charles M. Golladay.
Ashby Magisterial District,—Joseph H. Ruby, J. G. Neff, Ira Brinker.
Stonewall Magisterial District,—George W. Miley, Martin F. Snarr, D. F. Spiker.
Davis Magisterial District,—William Green, George H. Snarr, J. W. Eberly.

SMYTH COUNTY.

Marion Magisterial District,—Henry B. Haller, John T. Fry, James A. Groseclose.
Rich Valley Magisterial District,—J. D. Buchanan, Joseph Roberts, George P. Phipps.
St. Clair Magisterial District,—T. K. McKee, Robert C. Williams, Albert P. Killinger.

SOUTHAMPTON COUNTY.

Boykin's Magisterial District,—W. P. Gillette, W. J. Gillette, E. C. Majette.
Newsom's Magisterial District,—James R. Darden, George W. Prince, C. F. Whitfield.
Dreyryville Magisterial District,—R. N. Musgrove, R. H. Crichton, J. Gillette Claud.
Franklin Magisterial District,—W. H. Arthur, R. B. Bryant, A. M. Brownly.
Jerusalem Magisterial District,—R. B. Joyner, J. L. Cobb, John N. Sebrell, Sr.
Berlin and Ivor Magisterial District,—W. W. White, A. M. Atkins, J. C. Davis.

SPOTSYLVANIA COUNTY.

Courtland Magisterial District,—S. G. Howison, G. W. Clarke, John J. Brooks.
Chancellor Magisterial District,—L. M. Estes, E. H. C. Bailey, J. B. Trigg.
Livingston Magisterial District,—E. W. Smith, M. F. Waite, R. L. Biscoe.
Berkley Magisterial District,—L. G. Maddox, C. Richelieu Coleman, L. P. Chewning.

STAFFORD COUNTY.

Hartwood Magisterial District,—J. M. Hull, C. J. Chartters, Andrew Briggs.
Rock Hill Magisterial District,—Eddy L. Stern, Thompson S. Briggs, Nelson T. Shacklett.
Aquia Magisterial District,—James Ashby, Robert E. Duvall, Jack F. Clift.
Falmouth Magisterial District,—D. M. Lee, C. F. Towson, Jack L. Gouldin.

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SURRY COUNTY.

Blackwater Magisterial District,—S. B. Barham, Jr., G. F. Maynard, J. E. Rogers.
Guilford Magisterial District,—J. W. Rodgers, Jesse B. Riggan, J. O. Fitchett.
Cobham Magisterial District,—G. A. Savedge, W. Z. Holland, J. R. Barham.

SUSSEX COUNTY.

Courthouse Magisterial District,—W. T. Freeman, Wynn Crawford, Philip Rogers.
Henry Magisterial District,—W. H. Moore, J. H. Conway, J. T. Parker.
Newville Magisterial District,—E. T. Birdsong, R. H. Stevenson, L. J. Wrenn.
Stony Creek Magisterial District,—W. T. Saunders, F. E. Poole, G. R. Bobbitt.
Wakefield Magisterial District,—D. A. Marks, R. L. Faison, M. H. West.
Waverly Magisterial District,—A. E. Kitchen, J. P. Lilly, W. T. Harvell.

TAZEWELL COUNTY.

Clear Fork Magisterial District,—E. King Crockett, George H. Zimmerman, J. L. Baber.
Jeffersonville Magisterial District,—J. H. Lewis, J. H. Whitley, J. Ed. Peery.
Maiden Spring Magisterial District,—S. J. Thompson, E. B. Scott, W. P. Payne.

WARREN COUNTY.

South River Magisterial District,—William Robinson, L. H. Fristoe, L. F. Updyke.
Front Royal Magisterial District,—I. F. Beaty, John Peyton, C. M. Anderson.
Fork Magisterial District,—W. A. Baker, Charles Rogers, J. K. Putnam.
Cedarville Magisterial District,—Robert McKay, James W. Templeman, T. Haney.

WARWICK COUNTY.

Stanley Magisterial District,—J. H. Clements, W. P. Chapman, E. C. Crafford.
Denbigh Magisterial District,—J. Toomer Garrow, W. H. Curtis, James C. Williamson.
Newport Magisterial District,—A. Haughton, A. J. Jones, T. A. Sinclair.

WASHINGTON COUNTY.

Abingdon Magisterial District,—T. S. Hamilton, J. S. Gray, E. A. Dunbar.
Goodson Magisterial District,—C. F. Keller, W. R. Stockton, J. W. Riddle.
Holston Magisterial District,—W. R. Preston, W. J. Snodgrass, T. J. Edmondson.
Glade Spring Magisterial District,—Alexander Stuart, George Huff, Wesley Burhman.
Saltville Magisterial District,—R. G. Buchanan, M. W. Litton, E. K. McConnell.
North Fork Magisterial District,—William E. Roberts, E. H. Lee, W. R. Mongle.
Kinderhook Magisterial District,—J. T. Martin, J. H. Johnson, J. W. Kaylor.

WESTMORELAND COUNTY.

Washington Magisterial District,—W. C. Minor, James R. Fones, H. J. Horner.
Montross Magisterial District,—W. C. England, J. W. Hutt, Jr., E. F. Porter.
Cople Magisterial District,—W. W. Walker, George Vansant, B. F. Brown.

WISE COUNTY.

Richmond Magisterial District,—J. W. Kelly, A. M. Lea, R. T. Irvine.
Lipps Magisterial District,—J. D. Clay, W. A. Carrico, C. J. Edwards.
Roberson Magisterial District,—Troy Peak, Henry Adams, Thomas C. Alley.
Gladeville Magisterial District,—J. J. Kelly, Jr., A. N. Kilgore, W. H. Bond.

WYTHE COUNTY.

Ft. Chiswell Magisterial District,—W. Dick Sanders, J. E. Simmerman, F. M. Tate.
Lead Mines Magisterial District,—Tom Blair, John H. Huddle, J. T. Brooks.
Speedwell Magisterial District,—George A. Lambert, Samuel C. Landreth, Eugene Kyle.
Black Lick Magisterial District,—John L. Brown, William M. Coley, M. G. Porter.
Wytheville Magisterial District,—William Terry, V. H. Gibboney, J. S. Lawson.

YORK COUNTY.

Bruton Magisterial District,—D. R. Norment, William B. Schneck, C. H. Post.
Nelson Magisterial District,—C. H. Sheild, W. M. Crooks, J. W. Rogers.
Grafton Magisterial District,—J. J. Nottingham, J. E. Crockett, Arthur B. White.
Poquoson Magisterial District,—W. J. Stores, Walter Evans, John G. Wornom.

CITY OF ALEXANDRIA.

1st Ward,—Edgar Snowden, Peter Aitcheson, O. C. Phillips.
2nd Ward,—Henry Strauss, George E. Price, C. M. Schwab.
3rd Ward,—Charles B. Marshall, George W. Bontz, B. F. Penn.
4th Ward,—C. J. W. Summers, William E. Fendall, Champ Walker.

CITY OF BRISTOL.

J. N. Johnson, S. H. Rogers, George W. Wolfe.

CITY OF BUENA VISTA.

1st Ward,—G. W. Leckie, W. P. Lee, W. T. Paxton.
2nd Ward,—Hugh A. White, S. P. Gibson, T. L. Brown.

CITY OF CHARLOTTESVILLE.

1st Ward,—E. O. McCue, J. E. Early, A. V. Conway.
2nd Ward,—F. M. Wills, B. Letterman, H. Spangler.

3rd Ward,—J. B. Norris, E. L. Jarman, Grafton D. Payne.
4th Ward,—C. G. Sinclair, Roy K. Flannagan, Thomas S. Jones.

CITY OF DANVILLE.

1st Ward,—William Ayres, Jr., Garland S. Wooding, Thomas Hamlin.
2nd Ward,—A. W. Douthat, C. H. Richmond, W. W. Clark.
3rd Ward,—J. B. Fuller, A. C. Edmunds, John G. Lea.
4th Ward,—B. H. Custer, W. D. Cook, M. F. Dove.

CITY OF FREDERICKSBURG.

Upper Ward,—E. D. Cole, S. E. Eastburn, J. J. Berrey.
Lower Ward,—A. W. Embrey, Henry Dannehl, J. Wilmore Cox.

CITY OF LYNCHBURG.

1st Ward,—Leon Goodman, G. P. Watkins, H. A. Southall.
2nd Ward,—Fred. Harper, S. Garland Hamner, J. A. Scott.
3rd Ward,—C. A. Colhoun, A. B. Percy, H. D. Johnson.

CITY OF MANCHESTER.

1st Ward,—C. V. Green, J. H. Busby, Carter C. Jones.
2nd Ward,—J. R. Perdue, Jr., L. M. Nunnally, A. G. Evans.
3rd Ward,—F. S. Robertson, J. L. Owens, M. A. Rightsell.
4th Ward,—B. M. Robertson, W. L. Porter, W. T. Davidson.

CITY OF NEWPORT NEWS.

1st Ward,—A. A. Langhorne, S. W. Holt, P. J. Mugler.
2nd Ward,—Harry Howard, John Stigler, Samuel Boyd.
3rd Ward,—R. J. Charles, A. J. Moore, S. C. Garrow.
4th Ward,—L. R. Timberlake, George H. Adams, W. P. Wash
5th Ward,—T. F. Stearnes, J. T. Marston, J. W. Phillips.
6th Ward,—C. D. West, Grant Colvin, R. T. Styll.
7th Ward,—George W. Burcher, W. A. Post, William Haley.

CITY OF NORFOLK.

1st Ward,—A. M. Higgins, H. N. Poulson, J. A. Baecher.
2nd Ward,—Barton Myers, A. J. Dalton, Willoughby T. Cooke.
3rd Ward,—Walter H. Taylor (son of Richard), James E. Heath, Jr., Robert S. Broughton.
4th Ward,—James T. Holland, James G. Brownley, Charles C. Grant.
5th Ward,—N. C. Pamplin, A. M. Cousins, James L. Winston.
6th Ward,—Robert W. Tomlin, Victor Parks, W. Leigh Williams.
7th Ward,—P. C. Stanworth, J. T. Deal, Ira T. Holt.

CITY OF PETERSBURG.

1st Ward,—J. W. Wells, J. M. Saunders, F. S. Myers.
2nd Ward,—J. J. Birchett, J. W. Friend, N. E. Wicker.

3rd Ward,—A. R. Moody, Samuel Gentry, W. D. Spratley.
4th Ward,—C. P. Coldwell, R. G. Bass, R. L. Claytor.
5th Ward,—James A. Collier, R. W. Ford, Thomas B. Ivey.
6th Ward,—W. E. Meredith, B. D. Akers, D. C. Duane.

CITY OF PORTSMOUTH.

1st Ward,—Antonio L. Bilisoly, W. Clark Moore, Charles R. Welton.
2nd Ward,—Thomas J. Barlow, Calder S. Sherwood, Frank L. Crocker.
3rd Ward,—Charles H. Morris, James N. Peed, John C. Parkerson.
4th Ward,—John T. King, Joseph P. M. Joyce, L. H. Davis.
5th Ward,—L. M. Palmer, Charles W. Johnson, George R. Trant.

CITY OF RADFORD.

West Ward,—Charlie Ross, G. C. Wharton, W. A. Wilson.
East Ward,—H. C. Preston, R. J. Noell, J. F. Baldwin.

CITY OF RICHMOND.

Marshall Ward,—R. T. Lacy, W. M. Williams, James A. Black.
Jefferson Ward,—Henry M. Tyler, Thomas W. Joseph, George E. Bowden.
Madison Ward,—A. S. Lanier, Robert Lee Traylor, Thomas W. Walsh.
Monroe Ward,—B. Rand. Wellford, B. R. Selden, W. T. Walker.
Lee Ward,—Roscoe C. Nelson, R. T. Davis, W. J. Kimbrough.
Clay Ward,—Ernest M. Long, Robert B. Pettis, John R. Hooper.
Jackson Ward,—J. H. Bradley, John A. Haley, John McEneany.

CITY OF ROANOKE.

1st Ward,—Oscar D. Derr, C. W. Beckner, J. A. Fishburn.
2nd Ward,—J. H. Earman, B. Rust, A. M. Nelson.
3rd Ward,—E. J. McDonald, W. E. Thomas, Patrick Foy.
4th Ward,—Junius McGhee, J. B. Ambroselli, H. D. Colley.
5th Ward,—M. P. Scott, S. W. Farrar, J. A. Page.

CITY OF STAUNTON.

1st Ward,—J. A. Hutcheson, W. B. McChesney, R. E. R. Nelson.
2nd Ward,—John M. Carroll, George W. Blackley, Dennis Brown.

CITY OF WILLIAMSBURG.

L. W. Lane, Jr., C. B. Trevillian, W. C. Johnson.

CITY OF WINCHESTER.

1st Ward,—J. M. Haymaker, Adam Forney, J. W. Taylor.
2nd Ward,—Julian F. Ward, J. Brad. Beverly, Harry Wood.
3rd Ward,—W. W. Wall, Charles Fitzpatrick, Ross Barr.
4th Ward,—W. P. McGuire, T. M. Barr, Joseph Kiger.

140&141 And on the 15th day of November, 1902, the following order was entered and filed, to-wit:

Order to Show Cause.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	In Prohibition. No. 1759.

Upon the petition for a writ of prohibition.

This day came the petitioners by John S. Wise and James H. Hayes, Esquires, their attorneys, and exhibited to the court their petition and exhibits marked "A," "B" and "C," upon which petition and exhibits they have prayed the issuance of a writ of prohibition delivered to the above-named defendants, prohibiting them in their character as the board of State canvassers of Virginia, or any of them acting as members of the board of State canvassers, from canvassing, counting, determining upon, or certifying, or otherwise acting upon, any returns or abstracts of returns in the office of the secretary of the Commonwealth of Virginia, purporting to be returns of an election held in the State of Virginia on Tuesday, November 4, 1902, for representatives in Congress from the State of Virginia, or in anywise dealing with, counting, canvassing, considering, determining upon, or certifying, the results of said returns, on the ground that by reason of the disregard of
142 law and failure to hold said election according to the laws of the State of Virginia and the United States, said returns are not lawful returns, or of a lawful election held for the representatives in Congress from the State of Virginia on the date aforesaid, but are null, void, and of no effect. And thereupon it is ordered that the said respondents, Andrew J. Montague, governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia, Morton Marye, auditor of public accounts of Virginia, Asher W. Harman, Jr., treasurer of the State of Virginia, and William A. Anderson, attorney-general of Virginia, who constitute

the board of State canvassers of Virginia, be and they are each, all and every one of them required to appear before this court at Richmond, Virginia, upon the 20th day of November, 1902, at 11 o'clock, a. m., to show cause, if any they have or can show, why the writ of prohibition prayed for in said petition should not be granted against them as individuals, as holders of the respective offices above named, and as constituting, by virtue of their said offices, the board of State canvassers of Virginia, prohibiting them from considering, canvassing, counting, determining upon, certifying, or otherwise acting upon, any returns or abstracts of returns in the office of the secretary of the Commonwealth of Virginia, purporting to be returns of an election held in the State of Virginia on Tuesday, November 4th, 1902, for representatives in Congress from the State of Virginia, or in anywise dealing with, or certifying, the results of said returns.

Ordered further that copies of the foregoing petition and of this order shall be served upon each and all of said defendants on or before the 17th day of November, 1902, but no copy of the
143 exhibits filed with the said petition shall be served upon said respondents, for the reason that said exhibits are public documents, accessible to each and all of said respondents.

EDMUND WADDILL, JR., *U. S. Judge.*

Marshal's Return.

I certify that I this day delivered a true copy of the petition in the above case, together with a true copy of the above order, upon the following named defendants: Andrew J. Montague, governor of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia.

MORGAN TREAT,
United States Marshal, Eastern District of Virginia.

Richmond, Virginia, November 15th, 1902.

And further on the 17th day of November, 1902, by delivering a true copy of the petition in this cause, together with the order therein, to the following named respondents; David Q. Eggleston, secretary of the Commonwealth of Virginia, in person at his office in the city of Richmond; and by delivering a true copy of said petition and order to Mrs. William A. Anderson, wife of William A. Anderson, attorney-general of Virginia, at his residence 301 E. Franklin street, Richmond, Virginia, and explaining the nature thereof to her, Mr. Anderson being out of the city.

MORGAN TREAT,
United States Marshal,
By M. A. COLES,
Chief Office Deputy.

144 *Special and Limited Appearance of Defendants.*

Filed November 20th, 1902.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	In Prohibition.	No. 1759.

We, the undersigned attorneys at law, hereby appear in behalf of the respondents in the above-named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein against the respondents, and for that purpose alone; and, without waiving the objection to the jurisdiction of this court or the said limited and special appearance, but insisting thereon, the undersigned move the court to enlarge the rule heretofore issued in this cause, which was made returnable to this day, until Friday, the 28th day of November, 1902, at eleven o'clock a. m., in order that the said respondents may have further time to make answer to said rule. And this appearance is made specially and solely for the purpose of objecting to the jurisdiction of this court in said cause, and for no other purpose whatsoever; and said motion for the enlargement of said rule is in no way intended to waive the objection to the jurisdiction of this court, or to impair the special and limited character of this appearance.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
FRANK W. CHRISTIAN,
Attorneys for Respondents.

145 And on the 20th day of November, 1902, following order was entered and filed, to wit:

Order.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	In Prohibition. No. 1759.

This day came the respondents, by their attorneys, William A Anderson, attorney-general of Virginia, and Frank W. Christian, and entered their special and limited appearance for the purpose of objecting to the jurisdiction of this court in this cause, and for no other purpose.

And, not waiving their said special appearance, the attorneys for the respondents moved the court to enlarge the rule hereinbefore granted until Friday, the 28th day of November, 1902; said limited and special appearance being in writing and filed with the papers in this cause. And, accompanying said motion to enlarge the rule, the respondents, by their counsel, in consideration of the enlargement of the said rule, give the court and opposing counsel the assurance that said board of State canvassers will not ascertain the result of the votes cast, or issue any certificates of election to the candidates for representatives in the Congress of the United States at the election held November 4th, 1902, in the State of Virginia, until after the 28th day of November, 1902; provided, further, unless otherwise ordered by some court of competent jurisdiction, that in case any leagl proceedings shall be instituted *an* any other court to compel said board of State canvassers to canvass said votes or issue said certificates, said board will immediately notify counsel for the petitioners so as to give them opportunity to protect their rights before said board acts under any order which may be issued by another court.

Thereupon, the petitioners not objecting to the entry of the said order, said rule is accordingly enlarged.

EDMUND WADDILL, JR., *Judge.*

Answer of Defendants.

Filed November 28th, 1902.

146 *Prohibition Suit.*

JONES AND OTHERS, Complainants,
vs.
VIRGINIA STATE BOARD OF CANVASSERS, Respondents.

Answer of Respondents to Rule to Show Cause Why a Writ Shall not Issue.

William A. Anderson, attorney-general, and
Frank W. Christian, for the respondents.

146*a* In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and EDGAR POE LEE, Petitioners,
vs.
ANDREW J. MONTAGUE, Governor of Virginia; DAVID Q. EGGLESTON, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of the Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of the Commonwealth of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.

In prohibition.

The answer of respondents to a rule made in this cause returnable on November the 20th, 1902, and afterwards enlarged until this day summoning these respondents to appear and show cause, if any they can, why the writ of prohibition as prayed for in said petition should not be granted against them in accordance with the prayers of said petition.

147 These respondents, for answer to said rule, answer and say:

(1.) They deny that this court has any jurisdiction to entertain this case, or to enter any order therein, because the same is an action or proceeding against the State of Virginia and is in violation of the eleventh amendment to the Constitution of the United States. The right to relief asserted in the bill, if cognizable at all by any judicial forum, is of a political character, and seeks to control these respondents, who have no private interest therein, in their official character as constituting the said board of State canvassers in the discharge of executive, political and governmental duties and functions. That the action of the said board is really the political and governmental action of the State of Virginia itself; that the

State of Virginia is directly interested, and would be directly affected in some of her most important rights by any relief granted in this proceeding; that Virginia is an indispensable party before any such relief can be given; and if Virginia is represented by these respondents, the said proceeding constitutes a suit against the State, and is forbidden by the eleventh amendment to the Federal Constitution; and if these respondents do not represent the State of Virginia, she is an indispensable party; and since the eleventh amendment forbids her being made a party, the proceeding is inhibited and cannot be entertained by this court.

(2.) Respondents further say, that if they are in error in the foregoing contention, still the rights asserted by the plaintiffs and the duties attempted to be restrained, are political in their character; that the duties and functions of these respondents, the performance of which the petitioners seek to prohibit, are executive and
148 political functions and duties, in the performance of which not only the State of Virginia, but many other persons, including all persons entitled to vote at the election held in Virginia on November the 4th, 1902, have an interest.

(3.) That this court cannot interfere by writ of prohibition with the acts of your respondents constituting the board of State canvassers of the State of Virginia, touching the canvassing of the returns and ascertaining the result of the election for members of the House of Representatives held on November the 4th, 1902, or issuing certificates of such election to those receiving the majority of the votes cast; and that the attempted exercise of such jurisdiction would invade the province and independence of the House of Representatives, a part of a co-ordinate branch of the Federal Government.

(4.) That the writ of prohibition only lies as an extraordinary writ to control and supervise an inferior court so as to prohibit such court from exceeding the bounds of its jurisdiction.

(*a.*) These respondents state, that the board of State canvassers of Virginia is not a court. Its functions and duties are all set forth in section 142 of the Code of Virginia of 1887, and in section 143, which latter section merely prescribes how an election may be determined in case of a tie; that the said functions and duties, while political and executive in their nature and while they involve a certain amount of discretion, are not judicial; and, therefore, on this ground no prohibition can issue against this board from any court.

(*b.*) Such prohibition can only issue to supervise and control the jurisdiction of an inferior court; and these respondents say that the board of State canvassers of Virginia, if it were
149 a court at all, would not be an inferior court to this court, but would constitute a court of the Commonwealth of Virginia established under her laws; and that, therefore, no prohibition could issue to restrain its jurisdiction. Section 720 of the Revised Statutes of the United States expressly provides that a writ of injunction shall not be granted by any court of the United States to

stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. Your respondents submit that this proceeding is embraced within the spirit of this provision and doubtless writs of prohibition would have been also specifically named except for the general principle that such writs issue only from superior to inferior courts; and it was not contemplated that any court of a State could be considered an inferior court to the Federal courts, except possibly in cases where appeals are provided for from the courts of the State directly to the Supreme Court of the United States.

(c.) Further, the office of the writ of prohibition is simply to restrain the action of an inferior court because the proposed proceeding or act sought to be prohibited is beyond the bounds of its jurisdiction. These respondents say that the acts sought to be prohibited here are within the jurisdiction of the said board of State canvassers of Virginia under a valid statute of the State of Virginia passed, not only in pursuance of the constitution of Virginia, but pursuant to a permission or provision contained in the Constitution of the United States.

(5.) In order that the complainants may maintain this petition, they must show that the case is embraced within the provisions of some act of Congress conferring the particular jurisdiction on
150 this court; and they submit that there is no such act of Congress; and, therefore, the court is without jurisdiction to entertain this proceeding. It has been repeatedly held by the Supreme Court of the United States, that writs of mandamus (which stand upon the same footing and are governed by the same rules as writs of prohibition) are not embraced within the eleventh section of the act of 1789, or any amendment thereof, giving to the circuit courts cognizance of suits of a civil nature at law or in equity, arising under the Constitution or laws of the United States, or between citizens of different States. Such writs were considered, at the time of the adoption of the Federal Constitution and the judiciary act, high prerogative writs extraordinary in their character, not issuing as of right. The jurisdiction of them was conferred by the fourteenth section of the judiciary act which now (slightly amended) constitutes section 716, of the Revised Statutes of the United States, which reads as follows:

"The Supreme Court and the circuit and district courts shall have the power to issue all writs of *scire facias*. They shall also have power to issue all writs not specifically provided by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law."

It is settled that the circuit courts of the United States have, by virtue of this section, no power to issue original writs of prohibition, but only ancillary writs of prohibition when necessary, "for the exercise of their respective jurisdictions"—that is, for the purpose of enforcing, or preventing interference with, jurisdiction in a
151 case already pending in the court, the said writ being merely auxiliary to and in aid of a jurisdiction already rightfully acquired.

(6.) Respondents submit, and aver that the petition sets out no case upon other grounds appropriate for judicial cognizance. The only grievance asserted by the complainants is, that the registrars refused to place them on the registration lists. They do not allege that either of them offered to vote. They do not allege that either of them resorted to the means provided in the registration ordinance for correcting any error or injustice on the part of the registrars by appeal, first, to the corporation court, and from the decision of that court to the supreme court of appeals of Virginia, the highest court in the State, which appeal could be taken without costs.

Having failed to avail themselves of means thus provided for enforcing their primary right, they cannot come to this court for a writ of prohibition against these respondents discharging their duties under the law, in the performance whereof all persons voted for at said election, and the United States and the Commonwealth of Virginia itself, are directly interested.

It can hardly be supposed that any court, in order to protect these complainants who have utterly failed to avail themselves of means for protecting themselves, will grant the extraordinary writ of prohibition to prevent the exercise of a jurisdiction in which so many interests are concerned not represented before the court, even if the grant of such relief were not forbidden upon other grounds stated in this answer.

(7.) While these respondents do not feel that it is either necessary or proper that they should at this stage notice or answer all the details of the complainants' bill, it is deemed proper that they
152 should notice and take issue upon some of the positions and statements made in said bill, which they will now proceed to do:

(a.) In the first place, they think it is not improper that they should express the surprise they feel to find that at this late day, nearly forty years after the end of the late unhappy war, serious reliance should apparently be placed upon the restrictions upon the State of Virginia in respect to suffrage attempted to be imposed by the act of Congress of January the 26th, 1870.

The right of suffrage is one derived from the State itself. The only limitation upon the power of the State springs from the provision of the Constitution of the United States that such right shall not be abridged or denied on account of race, color or previous condition of servitude. The only right in respect to suffrage derived from the Federal Constitution is the right to be exempt from discrimination on account of race, color or previous condition of servitude; and the right of voters in the State who have the qualifications prescribed by the State for voters of the most numerous branch of the State legislature to vote for members of Congress.

The right of a State to determine for itself from time to time according to then existing exigencies what persons or classes of persons possess sufficient intelligence, virtue and interest in the Commonwealth to entitle them to exercise the right of voting is one of the most fundamental and important rights which can belong to a

free people. The existence of such right to regulate suffrage is as important to those who may be unfit for its exercise as it is to the welfare and happiness of those entrusted with it, and it may be safely affirmed that this right to regulate suffrage within its borders is possessed by the State of Virginia to the same extent and in the same degree as it is by the States of Massachusetts or New York. It is denied that the restrictions attempted to be imposed by the act of Congress of January the 26th, 1870, were ever expressly accepted by the State of Virginia. Even the legislature of the State would have no power to impose such a fundamental limitation upon the power of the State.

The act of Congress of January the 26th, 1870, was part and parcel of the reconstruction legislation adopted by Congress after the
153 war, which legislation has never been passed upon directly, we believe, by the Supreme Court of the United States; but it can hardly be said that there is any doubt in the professional mind of this country as to what fate that legislation would have received if it had ever been allowed to be subjected to the decision of the Supreme Court of the United States.

That tribunal has held repeatedly that, while the effect of the late war was to establish hostile governments in the States who undertook to secede and to sever temporarily the relations of the *governments* of those States to the Union, the *States* themselves were never beyond its pale, and that after the question of the right of those States to secede had been settled by the arbitrament of arms, they remained in the Union, subject to the duties and limited surrender of power contained in the Federal Constitution and also entitled to all the rights granted by it or reserved to themselves or their people.

The power to pass the reconstruction measures was based solely upon the requirement of the Constitution that "the United States shall guarantee to every State in this Union a republican form of government."

Under this provision, Congress had the right to adopt only such measures as were necessary and appropriate to secure that result. The power was a power of guaranteeing or insuring, not a power of originating or establishing provisions of government in the several States.

We have seen that a government may be republican in form without a universal or unlimited suffrage. Indeed, it is inconsistent with any wise or well-ordered government that there should be a basis of suffrage which is unalterable in view of the changing circumstances and conditions of the body politic. It must, therefore, be palpable that the restriction embodied in the act of Congress of January the 26th, 1870, was not a necessary and appropriate means of guaranteeing to the State of Virginia a republican form of government and that, therefore, Congress had no power in this extra-constitutional method to inject any such restriction into the fundamental law of this State.

When the people of Virginia had adopted the constitution
154 of 1869 and elected executive and legislative officers and members of the house of representatives they had organized a republican form of government as required by the Federal Constitution, and the obligations of Virginia (the principal obligor) to the Constitution of the United States having been performed, there remained nothing for the guarantor to do.

The right of representation in Congress belonged to the State of Virginia under the Constitution of the United States as much as it did to the other States in the Union, and it was entitled to the enjoyment of that right without condition and without restriction. Accordingly, it must follow that this restriction upon the fundamental rights of the State as a condition to the enjoyment of its constitutional right to representation in Congress was not binding upon the State either in law or in morals.

(*b.*) The schedule and the ordinance of registration referred to in the bill formed a part of, and were incidental to, the constitution of 1902. The ordinance is referred to repeatedly in the constitution itself as a part of its provisions, and some of the articles of the constitution were made dependent for their effect and execution upon the said ordinance.

The respondents submit that the whole of the said constitution, schedule and ordinance were validly adopted by the constitutional convention and that the same became operative and effective for all purposes as a constitution of this Commonwealth on the 10th day of July, 1902, in accordance with the mandate of the said convention.

The power of the convention to ordain the constitution without submission for ratification to the vote of the people is beyond serious question. Mr. J. R. Tucker, in his work on the Constitution, says:

"During the last half century or more it has been the usual practice for the convention to frame the constitution and then submit it to a popular vote for final ratification. But this practice has had exceptions, and it may be safely stated that the validity of a constitution will not be held to depend upon its final ratification by popular vote."

1st Tucker on the Constitution, page 69.

155 This learned constitutional author points out that the first constitutions of all of the original States, including Virginia, were ordained by conventions without ratification by the people; that the first constitution of Virginia, drawn by George Mason and so ordained, was held to be valid by our court in *Kamper v. Hawkins*, 1st Va. Cases, 20, and that the Constitution of the United States was adopted by a convention and ratified by conventions in the several States without submission to popular vote and that the various amendments of the Federal Constitution have been adopted without ratification by the people; that the same practice has been adopted recently in several of the Southern States, and that in the case of

Mississippi the validity of its constitution so adopted was affirmed in the case of *Williams v. Mississippi*, 170 United States, 213, remarking, however, that it seemed that the question under discussion was not raised in that case.

It may be added that the Virginia constitutional conventions of 1830 and of 1850 in effect ordained their suffrage articles, submitting the residue of the constitution to the enlarged class of voters enfranchised by them.

It is respectfully submitted that a convention representing, as it does, the body politic, itself has inherent and absolute power to ordain a constitution without submitting it back to the people themselves. This is still clearer in Virginia, when the provisions of article 12 of the constitution of 1869, which provide for changes in the constitution, are examined. The first section of article 12 provides for changes to be effected through the medium of two legislatures of the State, chosen at successive elections, it being provided that amendments may be proposed and if agreed to by a majority of the members of both houses, the same shall be referred to the General Assembly chosen at the next general election; and if that General Assembly shall agree to the proposed amendment it shall be its duty to submit the amendment to the people; and if the people approve and ratify the amendment, it shall become a part of the constitution.

Section 2 of article 12 is in strong contrast with the pro-
156 visions just referred to. Section 2 provides for the adoption of a new, revised or amended constitution, through the action of a constitutional convention, and instead of providing that its action shall be submitted to ratification by popular vote, it entirely omits any such requirement, and by the plain meaning of the language used confers final and absolute power upon the convention itself to ordain the constitution adopted by it. It is provided that at the general election to be held in the year 1888 and in each twentieth year thereafter and also at such time as the General Assembly may by law provide, the question, "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to the qualified electors.

In pursuance of this provision, the legislature of Virginia, by an act passed on March 5, 1900, submitted the said question in those prescribed terms to the people. The election held under the said act resulted in favor of the convention. This definitely fixed the status and powers of the convention beyond the reach of further legislative interference or restriction. The constitution provided, "in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the General Assembly at its next session shall provide by law for the election of delegates to such convention."

By an act passed on February the 16th, 1901, the legislature did, in obedience to this constitutional requirement, provide for the election of members of the convention. To that extent, and to that extent only, was the act of February the 16th, 1901, constitutional

and binding. The addition thereto requiring the constitution adopted by the convention to be submitted to ratification by the vote of the people was beyond the legislative power.

In addition to this, it is believed that no constitution adopted by a convention and recognized by all the departments of government has ever been held by any court to be invalid. What constitutes the constitution of a State and when the same has become operative and effective and binding upon the people are political questions; and it has been held by courts of the highest authority that
157 when a constitution has been so recognized and accepted by all departments of government in the State, as has been done in the case of the present constitution of Virginia, the question of its validity is closed and cannot be any longer open to question. In addition to the acts of recognition referred to in the bill, the said constitution has been recognized by acts passed by the General Assembly of Virginia and approved by the governor since the said constitution went into effect.

So that, even if there could be any serious doubt about the original power to ordain the constitution of 1902, and if this question is one which can ever be passed upon by the courts of another jurisdiction than that of the State itself whose constitution is the subject of inquiry, in the present case the bill alleges the fact that the constitution of 1902 and its schedule and ordinance have been recognized by every department of government, and we, therefore, submit that its constitutionality and validity cannot now be questioned or denied.

(c.) Respondents submit and maintain that it was neither necessary nor proper that members of the convention should take any oath as officers of the State under the former constitution of the State and that it is a matter of no moment, so far as the validity and effect of the said constitution is concerned, whether such oath were taken or not.

(*d.*) These respondents deny that the right of citizens of the United States to vote is denied or abridged on account of race, color or previous condition of servitude by the provisions of the said constitution, schedule or ordinance of registration, or any of them. It is submitted that there is not a single provision in the said constitution, schedule or ordinance which makes the slightest distinction between citizens of the United States on account of race, color or previous condition of servitude. It is also denied by these respondents that any denial or abridgement of the rights of citizens of the United States to vote has been made on account of race, color or previous condition of servitude by the State of Virginia or by the officers of the State of Virginia in the enforcement, application and execution of the provisions of the said constitution, schedule
158 and ordinance, or any of them. These respondents are informed and believe that the provisions of the ordinance of registration have been generally, if not in all cases, fairly and impartially administered without such alleged discrimination by the registrars selected and appointed by the constitutional convention

as being men of character and standing in their various localities. In the discharge of their duties, the registrars were subject to severe penalties of fine and imprisonment under the statute of Virginia if they wilfully or maliciously rejected from registration or corruptly registered any person contrary to law. (See section 3854 of the Code of Virginia of 1887.) And if the registrars either purposely or by mistake improperly refused registration to any person, means of redress were afforded by appeal to the circuit and corporation courts in the different counties and cities of the State, with a right of further appeal to the supreme court of appeals, the highest court in the State, without liability for costs.

(*e.*) These respondents deny as scandalous and false the unfounded statements contained in the bill, to the effect that the governor of Virginia and the other executive officers of the State, the judges of the courts of record of the State and the members of the General Assembly of the State have united in an attempt to abandon the government of Virginia under which they were elected to office, in violation of their duties to the people or have attempted to establish and proclaim said constitution and impose the same on the people of Virginia contrary to their will, without giving the people of Virginia an opportunity to be heard, well knowing they would never ratify the same; and also the charge that the said officers, executive, judicial and legislative, have been at any time in conspiracy with the "dominant faction in said convention" for the purpose of accomplishing those results, as alleged in the bill, or for any other purpose whatsoever; or have entered into any combination or conspiracy with said "dominant faction" or any other persons or set of persons for any purpose whatsoever, as complained of in the bill. It is true that the said officers of the State, executive, judicial and legislative,
159 have recognized the said constitution as a valid and binding instrument, but they have not done so in pursuance of any combination or conspiracy of any kind, but, as your respondents believe and aver, because they were of opinion that it was their plain duty to recognize and support its provisions.

These respondents do not deem it necessary to reply in any further detail to many other matters contained in said bill, because it is not deemed proper or material to do so at this time. The said constitution has not only been thus expressly recognized by every department of the government of the State, but has been acquiesced in and accepted by the great body of the people of Virginia. It is proper to consider the disastrous consequences of now unsettling what has thus become an accomplished political fact of the highest importance in the State and to point out that the result of a decree to that effect emanating from this honorable court would necessarily produce a condition of unrest, uncertainty and chaos destructive of the peace, good order and welfare of the State.

In view of these results, as well as the other injurious consequences in the various other aspects heretofore pointed out in this answer which would flow from such a decree, it is respectfully submitted that this court will weigh with the most anxious care the grounds

of its jurisdiction and the right of the complainants to the relief sought in their bill before it will undertake to enter any decree in this cause.

And having fully answered, these respondents ask to be excused from further attendance upon this court.

ANDREW J. MONTAGUE,
Governor of Virginia.
D. Q. EGGLESTON,
Secretary of the Commonwealth of Virginia.
MORTON MARYE,
Auditor of Public Accounts of Virginia.
ASHER W. HARMAN, JR.,
Treasurer of Virginia.
WILLIAM A. ANDERSON,
Attorney-General of Virginia.

WILLIAM A. ANDERSON,
Attorney-General of Virginia,
FRANK W. CHRISTIAN,
Counsel for Respondents.

160 STATE OF VIRGINIA, }
City of Richmond, } *To wit:*

I, John S. Eggleston, a notary public in and for the city and State aforesaid, do hereby certify that Andrew J. Montague, D. Q. Eggleston, Morton Marye, Asher W. Harman, Jr., and William A. Anderson whose names are signed to the foregoing answer, this day personally appeared before me, in my said city, and made oath that the statements of fact contained in said answer, so far as made upon their own knowledge or information are true and that so far as said statements are made upon information derived from others, they believe them to be true.

Given under my hand this 27th day of November, 1902.

JOHN S. EGGLESTON,
Notary Public.

(My commission expires March 15, 1905.)

161 And thereupon afterwards, to-wit: on the 28th day of November, 1902, the said cause came on to be heard before the Honorable Melville W. Fuller, Chief Justice of the United States, allotted to the fourth circuit and Honorable Edmund Waddill, Jr., United States district judge for the eastern district of Virginia, and was argued by John S. Wise, Esquire, for the complainants and by Frank W. Christian, Esquire, for the defendants.

162 And on the following day, to-wit: the 29th day of November, 1902, the said cause came on again to be heard before the Honorable Melville W. Fuller, Chief Justice of the United States, allotted to the fourth circuit and the Honorable Edmund Waddill, Jr., United States district judge for the eastern district of Virginia,

and was argued by the Honorable W. A. Anderson, the attorney-general for the State of Virginia, for the defendants and John S. Wise, Esquire, and James H. Hayes, Esquire, for the defendants and submitted.

Memorandum of Chief Justice.

Filed November 29th, 1902.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	No. 1759. In Prohibition.

Application for prohibition, prohibiting defendants from canvassing returns of the election held November 4, 1902, for representatives in Congress, or proceeding to act on the same, and for preliminary order suspending proceedings on the part of the State board of canvassers. The rule heretofore entered herein is discharged, and preliminary order denied. This for want of jurisdiction. The writ is not sought in aid of jurisdiction already acquired; nor does it appear that there is no other remedy.

The proceeding is, in effect, against the Commonwealth,
163 which is in any view an indispensable party, and cannot be made such, and the matter being political, cannot be disposed of in such a proceeding.

Memorandum of Honorable Edmund Waddill, Jr., United States District Judge.

Filed November 29th, 1902.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	No. 1759.	In Prohibition.

Believing under the decisions of the courts of the United States, by which this court is, and should be governed, that neither of the action now before the court can be maintained, I, for that reason, concur in the result arrived at by the Chief Justice, dismissing the same, and may hereafter file a brief memorandum in writing, embodying my views.

It is, in frankness, due however, that I should say that while I believe that this is the law, as settled by the decisions, it does not entirely embody my personal views as to what that law ought to be. I can but believe that as to rights, arising under, and guaranteed to the citizen by the Constitution and laws of the United States, injuriously affecting one hundred thousand people, whether respecting their property, or their personal or political rights, and
164 particularly the two latter classes, that they ought to be given a day in court; afforded an opportunity for a full and speedy hearing; and to that end, that technicalities, forms and ceremonies should, in large measure, be dispensed with, speedy justice afforded, and the rights of the respective parties litigant ascertained.

And on the 29th day of November, 1902, the following order was entered and filed, to-wit:

Order Discharging Rule and Dismissing Bill.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, vs. ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth; Morton Marye, Auditor of Public Accounts; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	No. 1759. In Prohibition.

This day came this matter to be again heard on the papers formerly read, and the answer of the defendants to the rule awarded November 15th, 1902, filed November the 28th, 1902, and was argued by counsel,—

Whereupon, the court, for reasons stated in writing, and made part of this order, doth adjudge, order and decree that said rule be and the same is hereby discharged, and for the same reason, the court doth adjudge, order and decree that the prayers of said petition be and the same are hereby denied, and that the same be dismissed, with costs to the defendant.

MELVILLE W. FULLER,
Chief Justice of the United States, Allotted to the Fourth Circuit.

165 *Petition for Writ of Errors.*

Filed January 3rd, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	No. 1759. In Prohibition.

To the honorable judges of the circuit court of the United States for the eastern district of Virginia:

The petition of William H. Jones, John Hill and Edgar Poe Lee respectfully represents to your honors that they are aggrieved by a decision of this honorable court rendered in the above entitled cause on the 28th day of November, 1902, whereby the court refused to entertain jurisdiction of their petition, and entered a final order dismiss- the same and awarding costs against petitioners.

A copy of the record in the case is hereto attached.

This petition humbly prays for a writ of error from said final decision to the Supreme Court of the United States.

Accompanying this petition are the assignments of error required by the rules of said court, and the bond likewise required by said rules.

All which is respectfully submitted.

PETITIONERS,
By JNO. S. WISE,
JAS. H. HAYES,
Their Attorneys.

166 *Assignment of Errors.*

Filed January 3rd, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners,
versus
ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.

No. 1759. In Prohibition.

Assignments of error.

On behalf of the petitioners the following assignments of error are filed with their petition for writ of error, as required by rule 35.

First Assignment of Error.

The court erred in holding that the State was a necessary party to this proceeding.

The substance of the prayer was not to compel the State to do anything, but to prohibit officers of the State from violating a plain duty.

Jurisdiction in such cases has been sustained in the Federal court and in the courts of Virginia in many causes.

Second Assignment of Error.

The rights asserted are protected by section 1972 of the Revised Statutes.

The grievance complained of was the attempt of the defendants to subject plaintiffs and others of their class to the deprivation of
167 rights, privileges and immunities secured by the Constitution and laws, under color of alleged statutes, ordinances and constitutions of Virginia, which, as plaintiffs aver, were not lawfully passed and not constitutional if passed.

The jurisdiction in the circuit court, to entertain such a case, is expressly conferred by section 629 of the Revised Statutes. Paragraph 12th of section 629 bestows upon the circuit court jurisdiction of suits to enforce the rights of citizens of the United States to vote in the several States, and paragraph 16th confers jurisdiction of all suits to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage of any State, of the rights, privileges and immunities secured to the plaintiffs by the Constitution of the United States, by the law providing for equal rights of citizens of the United States.

This particular form of suit is permitted to the petitioners, not only by the language of section 1979 of the Revised Statutes, which authorized them to bring an action at law, a suit in equity or other proper legal proceedings for redress, but by section 722 of the Revised Statutes, whereby it is expressly provided that the jurisdiction in civil matters conferred on the circuit court by the provisions of the title "Civil rights" shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law as modified and changed by the constitution and statutes of the State, wherein the court having jurisdiction of such civil rights is held so far as the same is not inconsistent with the Constitution and laws of the United
168 *States, shall be extended to and govern the United States courts in the trial and disposition of the cause.*

The aforegoing provisions were not modified by the amended jurisdiction act of August 13, 1888, (Supplement to the Revised Statutes, vol. 1, 611). On the contrary, they were expressly preserved intact.

They declare, define, enlarge and modify the jurisdiction of the circuit court, so that it is not lacking by reason of restricting precedents; yet they were utterly ignored and disregarded by the court below; and therein it erred.

Third Assignment of Error.

The court erred in refusing to entertain jurisdiction of the writ of prohibition against the defendants.

The rights of the petitioners which were interfered with are bestowed by the Federal Constitution and statutes. The wrong complained of was perpetrated under color of State constitutions, ordinances and schedules. The Federal court, by the laws, cited above, was empowered, in administering the remedy, to adapt itself, if need be, regardless of antecedent methods of procedure, to the remedies under which the State courts would have proceeded if they had been invoked.

Precedents in the State courts are ample to show that the State courts have exercised the jurisdiction in prohibition in such cases.

It was error to refuse to consider the jurisdiction expressly con-

ferred on the circuit court by section 722, in this class of cases, or to deny its existence, because of some *nisi prius* rulings in cases having no reference to this statute.

169 As was said by Mr. Justice Bradley in Penn. Co. *v.* St. Louis Alton, &c., R. R., 118 U. S. p. —.

"We must not shut our eyes to the fact that new circumstances and conditions, of themselves, require and produce a modification of old rules, or the application of new ones."

Much less must we shut our eyes to new remedies expressly conferred by statute, on the Federal courts, to protect newly recognized rights, and to prevent a flagrant violation thereof.

In 17th Wallace, 445, Railroad Co. *v.* Brown, the Supreme Court, speaking of a grant of railroad privileges by Congress in the District of Columbia, on conditions not to discriminate against blacks, said:

"Congress, in the belief that this discrimination was unjust, acted * * *. This condition it had the right to impose, and in the temper of Congress at the time, it is manifest the grant could not have been made without it. It was the privilege of the company to reject it, but to do this it must reject the whole legislation with which it was connected. It cannot accept a part and repudiate the rest. Having therefore constructed its road as it was authorized to do and in this way greatly added to the value of its property, it will be held to be a faithful compliance with all the terms accompanying the grant by which it was enabled to secure this pecuniary advantage."

If the Federal courts feel themselves so moved and empowered to act against a private corporation to enforce conditions not vital to freedom, how much more eager should we find them to compel recusant officials of a State to respect and observe conditions to which the faith of the State is plighted and in consideration of which pledges she enjoys her sovereignty.

170 No writ could be more appropriate to prevent the wrong complained of in the petition.

No writ has been expanded more rapidly in its practical uses, to meet the exigencies of new circumstances and conditions, as the science of law has advanced. None is in more common use to-day in the States of Virginia and West Virginia to accomplish the very purposes sought in this proceeding.

And there was no reason for refusing the writ in this case, under the authority granted by section 722 of the Revised Statutes, except that its use in the Federal courts prior to the enactment of that statute, had been somewhat restricted and technical.

And therein the court erred in its rulings.

It has not been thought proper in framing the aforesaid assignments of error to cite the authorities on which they rest. It seems more appropriate that they shall appear in the brief supporting the points.

And petitioners, by counsel, in view of the importance of this case, will upon the hearing of the cause, petition the honorable, the Su-

preme Court of the United States, for leave to discuss the subject fully and that they be not strictly confined to the specifications of error hereinabove set forth.

All which is respectfully submitted.

PETITIONERS,
By JNO. S. WISE,
Their Attorney.

171 And on the 3rd day of January, 1903, the following order was entered allowing writ of error.

Order Allowing Writ of Error.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM H. JONES, JOHN HILL, and Edgar Poe Lee, Petitioners, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	No. 1759. In Prohibition.

Ordered by the court this third day of January, 1903, on the petition and assignments of error this day presented to the court, that a writ of error issue to the plaintiff, as prayed, and that the penalty of the writ of error bond is hereby fixed at five hundred dollars, and a certified transcript of the record and all proceedings herein be transmitted to the Supreme Court of the United States.

EDMUND WADDILL, JR., *Judge.*

Writ of Error Bond.

Filed January 3rd, 1903.

Know all men by these presents, that we, Edgar Poe Lee of Richmond, Virginia, as principal, and J. B. Johnson of Manchester Virginia, and E. T. Jenkins of Richmond, Virginia, as sureties, are held and firmly bound unto Andrew J. Montague, governor
172 of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts

of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, in the full and just sum of five hundred dollars to be paid to the said Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of January, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the circuit court of the United States in and for the eastern district of Virginia in a suit pending in said court, between William H. Jones, John Hill and Edgar Poe Lee, petitioners, and Andrew J. Montague, governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, constituting the board of State canvassers of Virginia, respondents, a decree was rendered against the said William H. Jones, John Hill and Edgar Poe Lee and the said William H. Jones, John Hill and Edgar Poe Lee having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Andrew J. Montague, governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton
173 Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within twenty days from the date thereof.

Now, the condition of the above obligation is such, that if the said William H. Jones, John Hill and Edgar Poe Lee shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

EDGAR POE LEE. [SEAL.]
J. B. JOHNSON. [SEAL.]
E. T. JENKINS. [SEAL.]

Sealed and delivered in presence of—

JOSEPH P. BRADY,
Deputy Clerk U. S. Circuit Court.

Approved by—

EDMUND WADDILL, JR.,
United States District Judge.

Order to Transmit Record.

In pursuance of the writ of error aforesaid, and *and* according to the statute in such case made and provided, and of the order of the court herein, a transcript of the record and proceedings in the aforesaid cause, together with all things thereunto relating and with the said writ of error annexed is hereby transmitted to the Supreme Court of the United States.

Teste:

M. F. PLEASANTS, *Clerk*,
By JOSEPH P. BRADY, *Dep'y Clerk.*

174 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between William H. Jones, John Hill and Edgar Poe Lee, petitioners and Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of the public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia; and William A. Anderson, attorney general of Virginia, constituting the board of State canvassers of Virginia, respondents, a manifest error hath happened, to the great damage of the said William H. Jones, John Hill and Edgar Poe Lee as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 20 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of January, in the year of our Lord one thousand nine hundred and three.

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States
for the Eastern District of Virginia.

Allowed by
EDMUND WADDILL, JR.,
Judge of the District Court of the United States
for the Eastern District of Virginia.

175 UNITED STATES OF AMERICA, *ss*:

To Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 20 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Virginia, wherein William H. Jones, John Hill and Edgar Poe Lee are the plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., judge of the district court of the United States for the eastern district of Va., this third day of January, in the year of our Lord one thousand nine hundred and three.

EDMUND WADDILL, JR.,
United States District Judge.

176 On this 8th. day of January, in the year of our Lord one thousand nine hundred and three, personally appeared Samuel Bendit, deputy U. S. marshal, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to A. J. Montague, Morton Marye, Asher W. Harmon, Jr., William A. Anderson, on January 6th, 1903, and to David Q. Eggleston, on January 8th, 1903, in the city of Richmond, Va.

SAMUEL BENDIT,
Deputy U. S. Marshal.

Sworn to and subscribed the eight day of January, A. D. 1903.

JOSEPH P. BRADY,
Dep'y Clerk U. S. Circuit Court.

Marshal's Costs.

Fees	$10.00
Expenses	.25
Total	$10.25

177 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } ss:

I, M. F. Pleasants, clerk of the United States circuit court for the eastern district of Virginia, do certify that the foregoing is a true transcript of the record and proceedings of the said court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said court, at Richmond, Virginia, this 8th day of January, A. D. 1903.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk,*
By JOSEPH P. BRADY,
Deputy Clerk.

Endorsed on cover: File No. 18,783. E. Virginia C. C. U. S. Term No. 189. William H. Jones, John Hill, and Edgar Poe Lee, plaintiffs in error, *vs.* Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia, *et al.* Filed January 13, 1903.

(18,784.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 190.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, AND CLARENCE B. GILPIN, APPELLANTS,

vs.

ANDREW J. MONTAGUE, GOVERNOR OF VIRGINIA; DAVID Q. EGGLESTON, SECRETARY OF THE COMMONWEALTH OF VIRGINIA; MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF VIRGINIA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1903.

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Eastern District of Virginia,* } ss:

At a circuit court of the United States within and for the eastern district of Virginia, begun and held in the court rooms at the custom house, in the city of Richmond, on the first Monday of October, being the sixth day of same month, in the year of our Lord one thousand, nine hundred and two.

Present: The Honorable Edmund Waddill, Jr., judge; Morgan Treat, Esq., marshal, and M. F. Pleasants, clerk.

Among other were the following proceedings, to-wit:

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants,

versus

ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants. } In Equity. No. 538.

Be it remembered that afterwards, at the said term, to-wit: on the 14th day of November, 1902, the following bill of complaint and exhibits were filed:

2 *Bill of Complaint.*

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON and Clarence B. Gilpin, Complainants, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia: Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants.	In Equity. No. 538.

To the honorable judges of said court:

Complaining showeth unto your honors your orators who exhibit this bill on behalf of themselves and all other citizens of the United States who are voters and tax-payers of Virginia, similarly situated with themselves, who may come in and contribute to the costs of this suit, the following cause of action arising under the Constitution and laws of the United States.

First. That complainants and each of whom are, and were at the time of the committing of the grievances hereinafter set forth, citizens of the United States and citizens and residents of the State of Virginia and of the third district of Virginia, as Federal courts are constituted.

Second. That they and each of them are, and were at the time of the committing of the grievances hereinafter set forth, lawful voters of the State of Virginia, and as such entitled to vote for a Congressman for the third district of Virginia, as the congressional districts of said State are now constituted, at a general elec-
3 tion for members of the House of Representatives of the United States, which should have been held, according to law, in the State of Virginia, Tuesday, November 4th, 1902.

Third. That they, and each of them have heretofore, for periods varying from thirty-seven to one year, been citizens, residents and lawful voters of the Commonwealth of Virginia, under article 3, section 1, of the constitution of Virginia, which was ratified by the vote of the people of that State, July 6th, 1869, and under chapter VIII., section 62, of the Code of Virginia of 1887, enacted pursuant thereto by the General Assembly of Virginia in the year 1881 (Acts 1881–'2 c. 203, p. 214).

Fourth. That said constitution became the organic law of the State of Virginia under the following circumstances:

In the year 1861 a convention of the State of Virginia passed an ordinance of secession, under which it was attempted to secede from the Federal Union, and to establish new political relations with other States under a new and distinct political compact known as the Confederate States of America. The persons filling the executive, legislative and judicial offices of Virginia, at the time said ordinance was passed, transferred their allegiance from the United States to the Confederate States and organized armed resistance to the authority, jurisdiction and sovereignty asserted over Virginia by the United States.

A war between the forces of the United States and Confederate States ensued, lasting over four years, during the progress of which elections occurred in Virginia from time to time, under a civil government which acknowledged allegiance to the Confederate States of America, so that prior to the termination of said war, not only had the form of government existing in Virginia before the outbreak of said war disappeared, but the incumbents of all the offices in the State were persons elected while they were under
4 a government and allegiance hostile to the United States.

The armed forces of the Confederate States and of Virginia were conquered by the forces of the United States in the year 1865, and the persons holding the offices under the civil government of the State fled, and the government administered by them was destroyed upon the occupation of the capital and territory of Virginia by the armies of the United States.

The only actual government in Virginia from that time forth until the year 1870 was one of military occupation, or appointive civil government, subject to military control both under the authority and terminable at the pleasure of the Congress of the United States.

The Congress of the United States passed, during the period aforesaid, a series of acts known as the reconstruction acts, framed upon the theory that, after the conquest of Virginia, no republican form of government existed in Virginia, and that it was the duty of the United States to make good to the State the constitutional guarantee of a republican form of government. By one of said acts the people of Virginia were permitted to assemble, frame a constitution, and submit it to Congress, after the legislature elected when said constitution was voted upon had assembled and ratified the amendments known as the fourteenth and fifteenth amendments to the Constitution of the United States. Pursuant to that authority, the people of Virginia met in convention, framed a constitution, ratified it by popular vote July 6, 1869, and elected a legislature; and that legislature met, ratified said constitutional amendment and adjourned until the Congress of the United States should decide and determine whether the constitution adopted as aforesaid was satisfactory.

5 Among other provisions of said constitution were the following:

"Art. III.—Elective franchise and qualifications for office.

SEC. 1. Every male citizen of the United States twenty-one years old, who shall have been a resident of this State twelve months, and of the county, city or town in which he shall offer to vote three months next preceding any election, shall be entitled to vote for members of the General Assembly and all officers elected by the people."

The only classes of voters excluded by said constitution from exercising the right of franchise were:

1. Certain designated officers, soldiers, seamen or marines.
2. Idiots and lunatics.
3. Persons convicted of bribery in elections, embezzlement of public funds, treason, felony or petty larceny.
4. Persons who had fought a duel, or sent or accepted a challenge, &c.

The Congress of the United States, by an act passed January 26, 1870 (16 U. S. Stat. at Large, p. 62), after a debate upon said proposed constitution, allowed Virginia to resume her relations to the United States and to send representatives to Congress under said constitution, upon certain fundamental conditions, among which was the following:

"That the constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States, of the right to vote who are now entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law."

And subject to said conditions which she expressly accepted, under which she has acted for over thirty years, and which she is now estopped from denying or questioning, the State of Virginia was permitted to resume her relations to the United States and to exercise all her ancient sovereign rights, save as they were curtailed, surrendered and limited by her assent to the fundamental conditions aforesaid.

6

Fifth. Said constitution of Virginia, adopted in 1869, provides among other things, as follows:

"Article XII.—Future changes in the constitution.

"SEC. 2. At the general election to be held in the year 1888, and in each twentieth year thereafter, and also at such time as the General Assembly may by law provide, the question, 'Shall there be a convention to revise the constitution and amend the same?' shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such convention: Provided, that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage, or any civil or political right as conferred

by this constitution, except for causes which apply to all persons and classes without distinction."

Sixth. Complainants, having freedom and the right of suffrage guaranteed to them by the thirteenth, fourteenth and fifteenth amendments to the Constitution of the United States; by the fundamental conditions of the act of Congress of January 26, 1870; by the constitution of Virginia, adopted in 1869, and by the law of Virginia of 1881, above cited, have hitherto continuously enjoyed said franchise uninterruptedly until November 4th, 1902. They can read and write, are owners of real and personal property in Virginia; have a visible permanent interest in, and identify with, the State, in which they were born or have resided the greater portion of their lives, and have committed no offense, and are colored citizens.

7

Seventh. In the year 1900 a political party called the Democratic party, held complete control of the executive and judicial offices of Virginia and a large majority in both branches of the legislative department. Being so in control, the Democratic majority of the General Assembly passed an act, approved March 5th, 1900, submitting to the people of Virginia the question, "Shall there be a convention to revise the constitution and amend the same?" at a general election to be held upon the fourth Thursday in May, 1900.

Eighth. Complainants aver that in every method and by all the representative utterances through which political parties give pledges, the Democratic party of Virginia assured the voters of Virginia that if they voted in favor of said convention any revised and amended constitution which might be framed thereby would be submitted to the voters of Virginia for ratification or rejection. And they verily believe and charge that a vast majority of those who voted in favor of said convention were induced thereto by these assurances given by every representative politician, by the press and by party conventions of all political parties in the State.

Ninth. At the election held in May, 1900, the popular vote favored said convention, and was duly certified to the next General Assembly, which passed an act February 16, 1901, reciting that it was then proper to provide plans for the selection of the delegates to such convention, for the convening of said delegates and the organization of the State convention and for submitting the revised and amended constitution to the people of the State of Virginia for ratification or rejection.

Provision was made by said act for electing delegates to said convention on the fourth Thursday in May, 1901, and for the assembling of the convention June 12, 1901; and the act further provided that if the convention completed its work before October 5, 1901, the constitution framed by it should be submitted to the qualified voters of the Commonwealth as a whole, or by separate articles or sections, as the convention might determine, for ratification or rejection, at the general election to be held November 5, 1901; and that if the work of said convention was not finished

8

before October 5, 1901, it should remain for the next General Assembly to enact such measures as it should deem proper, for submitting the said constitution to the people of the State for ratification or rejection.

Tenth. Said convention assembled June 12, 1901, and pretended to organize, but a majority of the delegates elected thereto then and there refused to take or subscribe any oath of office in violation of art. III., sec. 5, of the constitution of Virginia, and no member of said convention ever qualified as such.

Whereby, as complainants insist and charge, all the proceedings of said convention were null, void and of no effect.

Eleventh. Nevertheless, said convention did attempt to act and remained in session until June 26, 1902, when it adjourned *sine die*, after pretending to ordain a constitution consisting of sixty-five pages of printed matter, eight pages of schedules and twenty-four pages of registration ordinances, all of which are hereto annexed as part thereof, marked Exhibit- A, B and C.

Twelfth. Notwithstanding the political pledges above referred to, and the requirements of the act of assembly aforesaid, that the work of said convention should be submitted to the voters of Virginia for ratification or rejection, a bare majority of a quorum of said convention, consisting exclusively of Democrats, refused to submit the said proposed revision and amendment of the constitution to
9 the people of Virginia, or to leave the manner of its submission for ratification or rejection to the next General Assembly of the State.

The proposition to submit the amended and revised constitution to the electorate as constituted under the laws theretofore in force, was rejected by a vote of—ayes, 33; noes, 52.

The proposition to submit it to the electorate provided for in said revised and amended constitution, was rejected—ayes, 24; noes, 58.

And the proposition, "Shall the constitution framed by this body be ordained by this convention?" was sustained by a vote of—ayes, 47; noes, 38.

The affirmative vote by which this outrage was perpetrated was less than a majority of the whole convention.

Fort*h*-seven members attempted, in violation of every pledge given by their party; without any constitutional or statutory authority to act definitively; in defiance of the law under which they were assembled, to impose upon the voters of Virginia as the organic law of the State a constitution embodying many subjects never theretofore embraced in any constitution of Virginia; never submitted to the voters of Virginia for their approval, and framed and intended to disfranchise two-fifths of the voters, who elected the delegates to the convention, or as many as the appointed agents of said dominant faction should thereafter see fit to deprive of suffrage.

Thirteenth. The design last referred to is manifest in sundry devices inserted in said constitution under pretence of guarding the electoral franchise as follows:

Under the constitution and laws of Virginia, as they existed

when said convention was assembled, the lawful voters of Vir-
10 ginia, that is to say, every male citizen of the United States, twenty-one years of age, who had been a resident of the State of Virginia twelve months, and of the county or town in which he offered to vote three months next preceding any election, was entitled to vote, provided he was duly registered.

The registration laws of the State of Virginia then in force provided for a registrar in every election district of all the counties and cities of the State, who held his office for a fixed term, which had not expired when said convention attempted to enact the unlawful measures hereinafter stated. Any voter of the Commonwealth might apply to said registrars for registration, and they were required annually, in May and October, to designate a time and place at which lawful voters might be registered.

Your orators aver and charge that the dominant faction in said convention wilfully and deliberately planned to destroy the electorate fixed by the then existing constitution of Virginia, and to that end it attempted to repeal the registration law above named, without submitting such action to the people, and contrary to the powers of said convention.

After incorporating into the proposed constitution, as article I. thereof, a bill of rights, which is a mockery of the liberties recited, when contrasted with what follows it, said convention, under article II., headed, "Elective franchise and qualifications for office," attempted to define and fix the qualifications of electors. Pretending to give a vote to every male citizen of the United States, resident in Virginia, twenty-one years of age, said section increased the term of residence — voters in the State to two years, and in the county, city or town to one year, and in the precinct where the citizen offers to vote to thirty days. To those primary quali-
11 fications it added requirements that such voters should be registered and should have paid a State tax. Superadded to these and annulling said pretended broad grant of franchise, was the requirement that there should be a new general registration in all the counties, cities and towns of the State during the years 1902 and 1903 at such times and in such manner as might be prescribed by an ordinance of said convention.

In violation of all precedent or authority, and contrary to law, the dominant faction in said convention thereupon, or shortly thereafter, passed an ordinance entitled, "To provide for the registration of voters under said constitution and prior to the year 1904," by the provisions of which registration was ordered, not in the voting districts as provided by the laws of Virginia then in force, but in the several magisterial districts of every county and in the wards of every city, thereby changing the territorial areas of registration districts and increasing the physical difficulties of registration.

It provided that said general registration should take place prior to the 15th day of October, 1902, and again prior to the 15th day of October, 1903; that the registrars should consist of a board composed of three citizens resident in such district or ward appointed by said

convention; whereby it undertook to change the time for holding registrations, the appointing power and the number of registrars. It restrained said boards from registering any persons who applied for registration, except those entitled to register under said constitution prior to January 1, 1904, and gave said boards power to administer oaths and examine under oath any applicants and witnesses; to receive evidence and hear testimony touching qualifications for registration. It further made the act of the majority of the board
12 the act of the board itself. It provided for the delivery of the lists of persons so registered to the judges appointed at such precinct to conduct said election, and provided for the prosecution of any person examined by said boards for perjury. It gave the right of appeal to a rejected voter to the county or corporation court, and thence to the supreme court of appeals, and after sundry other detailed provisions, in order to make more effectual the plans of disfranchisement settled upon by the dominant faction, it descended to the appointment of three designated individuals in every magisterial district of the counties and in every ward of the cities in the Commonwealth of Virginia, who could be relied upon as partisans of said faction to carry out its plans, whereby none but the persons whom it intended should be registered and allowed to vote would be placed upon the registration lists in any magisterial district or ward of the State of Virginia.

With the machinery thus provided and registration exclusively under control of its appointees, the dominant faction in said convention enacted into the constitution itself that its appointees should only register such voters of Virginia as presented themselves to them and were citizens of the United States having the qualifications of age and residence aforesaid, and possessing the following additional qualifications:

(1) Certain soldiers; (2) any son of such soldier; (3) owners of property, upon which, for the year next preceding that in which they offered to register they had paid at least one dollar of State taxes; (4) persons able to read any section of said constitution submitted to them by said officers of registration and to give a reasonable explanation of the same; or, if unable to read such section, were able to understand and give a reasonable explanation thereof when read to them by the officers.

13 Fourteenth. Complainants aver that the language aforesaid, purporting that every male citizen of the United States, as provided in the constitution of 1869 and required by the fundamental conditions of the act of Congress should be admitted to register, was a mere pretence of granting the right to register, coupled as it was, with the proviso that such right should only exist when the applicant possessed the other qualifications last hereinabove named. The act of Congress hereinabove cited expressly forebade the curtailment of the right of suffrage in that manner. So also do the fourteenth and fifteenth amendments to the Constitution of the United States. So also does the constitution of Virginia of 1869, and the laws enacted pursuant thereto. The first and second condi-

tions aforesaid were plainly obnoxious to that clause of the bill of rights, which forbids the granting of separate privileges to any man, or set of men, or granting privileges as descendible for service of an ancestor.

The third condition relating to the ownership of property on which taxes had been paid for the preceding year was likewise unconstitutional and void.

The fourth proviso, whereby the right of any citizen to exercise his franchise in Virginia was made dependent upon the judgment or caprice of partisan appointees, violated every idea of democratic constitutional liberty.

The autocrat of the Russian Empire has no more absolute mastery over the political forces of his empire and is no more potent to control the membership and organization of every representative body in his realm, or the incumbency of every office in his dominions in perpetuity, than has the dominant faction of said convention in Virginia, if said ordinance and constitution are valid.

Fifteenth. The schedule by which it was sought to put said
14 pretended constitution into effect provided that certain lawful electoral boards existing in Virginia prior to the convening of the said convention, and to which electoral boards the appointment of judges of election and registration was delegated, should remain in office until March 1, 1904, with the powers conferred by existing laws, except the appointment of registrars.

Said schedule further provided that, in all elections held after said pretended constitution went into effect, the qualifications of electors should be those required by the article II. of said pretended constitution therein set forth.

It further provided that said constitution should go into effect on the 10th day of July, 1902, at noon, and directed the governor of Virginia to immediately issue his proclamation, announcing that said revised and amended constitution had been ordained by the people of Virginia, assembled in convention, through their representatives, as the constitution for the government of the people of the State, and that it would go into effect as such, subject to the provisions of said schedule, on the 10th day of July, 1902, and to call upon the people of Virginia to render their true and loyal support to the same as the organic law of the Commonwealth.

It required that when the General Assembly convened on the 15th day of July, 1902, as it had been summoned to convene, its members and officers, before entering upon the discharge of their duties, should severally take and subscribe the oath or affirmation prescribed by section 34 of said constitution, which was an oath to support the Constitution of the United States and the constitution of the State of Virginia, ordained by the convention which assembled in the city of Richmond on the 12th day of June, 1901.

It further required that the governor of Virginia, and all
15 other executive officers of the State, whose offices are at the seat of government, and all judges of courts of record, should

severally take and subscribe such oath or affirmation, under a penalty of vacation of their offices.

Sixteenth. Complainants are advised that the governor of Virginia, did forthwith make proclamation as directed by said schedule, and that the governor of Virginia, Andrew J. Montague, and all the other executive officers of the State, whose offices are at the *seta* of government, and all the judges of courts of record, took and subscribed the oath required by said schedule, whereby they undertook to support the said alleged constitution; and that the members of the General Assembly, when it assembled on the 15th day of July, 1902, with one or two exceptions, took and subscribed said oath.

Seventeenth. Complainants aver that the passage of said ordinance creating said boards of registration; the appointments by said convention of the individuals composing said registration boards; the attempted additional qualifications upon the right of suffrage set forth in article II., section 19, of said pretended constitution, and especially said fourth qualification; and the attempts to ordain and proclaim said constitution without submitting it to the people of the State, are each, all and every one of them in violation of the rights of complainants, destructive of complainants' franchises, ruinous to complainants' property as placing them subject to the control of a spurious and false electorate; in violation of the XIVth and XVth amendments of the Constitution of the United States; in violation of the act of Congress of January 26, 1870; and in violation of the only existing constitution of Virginia, which was ratified by the people of Virginia July 6th, 1869, and the laws enacted pursuant thereto; and that each, all and every one of
16 said attempted acts, ordinances, appointments, constitution and schedule are null, void and of no effect.

Eighteenth. Complainants aver and charge that by means of the premises the governor of Virginia and all other executive officers of the State, the judges of the courts of record of said State, and the members of the General Assembly of said State, have united in an attempt to abandon the government of Virginia under which they were elected to office and that they and each of them have, in violation of their duties to the people who elected them, and in conspiracy with the dominant faction in said convention, attempted to ordain and proclaim said constitution and to impose the same upon the people of Virginia contrary to their will, without giving them an opportunity to be heard, well knowing they would never ratify the same, and in violation of the Constitution and laws of the United States and of the State of Virginia.

Nineteenth. They further aver and charge, and, if permitted to do so, will prove, that many of the members of the said convention, who voted in favor of ordaining and proclaiming said constitution, boldly avowed the purpose in framing the same, to disfranchise the great body of the colored voters of Virginia; and that however cunningly the devices contained in said instrument may be concealed, the real purpose of the dominant faction which framed and pro-

mulgated said so-called constitution was to disfranchise the colored voters of Virginia on account of their race and color, a purpose which will be fully accomplished unless restrained.

Twentieth. They further aver and charge, and, if permitted to do so, will prove, that members of the dominant faction in said convention, who voted in favor of ordaining and proclaiming said so-called constitution, openly and boldly declared that they knew said constitution would never be ratified and approved by
17 the voters of Virginia, if it was submitted to them for ratification or rejection, and that in voting to ordain and proclaim the same they did so, knowing full well that by that means alone if at all, could said constitution be imposed upon the people of Virginia.

Twenty-first. Complainants are further advised and charge that the government of Virginia having passed, by the methods above recited, from under the lawful constitution adopted by the people in the year 1869 to a government under said so-called constitution, the government now existing in Virginia is unlawful, notwithstanding many of the incumbents of office therein were lawfully elected to the offices which they hold.

Twenty-second. After the governor of Virginia had proclaimed said constitution, and the other executive officers and judges of courts of record and members of the General Assembly had attorned to said so-called new constitution, as hereinabove set forth, the registration boards appointed by the ordinance of said convention held their sessions and made up their enrollments in the various magisterial districts and wards of the Commonwealth. These complainants aver and charge, and, if permitted to do so, will prove, that in every section of the State of Virginia the action of said registration boards was as partisan and unconstitutional and outrageous as might have been expected under the circumstances of their appointment; that said boards hastened in many sections of the Commonwealth to place upon said registration rolls the names of every white male citizen of the United States possessing the qualifications of age and residence, and who was believed to be a Democrat; that the said boards made little or no effort to ask such white persons to read any section of said constitution or to give a reasonable explanation of the same, but quickly and cheerfully
18 admitted all such to registration; that said boards, on the contrary, only permitted colored voters to apply for registration at stated times and places, and that when such colored persons presented themselves said boards proceeded at once to ask complicated, difficult and unnecessary questions, and that even in cases where such questions were answered intelligently, applicants for registration were rejected by said boards, they holding that the answers and explanations given by them were not reasonable; and complainants aver that by means of the premises, thousands of lawfully qualified citizens of Virginia, who applied for registration to said registration boards, have been rejected by them, and that many other thousands of voters either refused to recognize said boards as lawfully con-

vened, or were deterred from applying to them by their notoriously partisan and arbitrary exercise of the unconstitutional powers entrusted to them.

Twenty-third. Complainant William S. Selden, colored age fifty-five, born in Richmond, lived here all his life. The election held November 4th, 1902, was the first election ever held in Richmond since petitioner became of age, at which he has missed a vote. Petitioner can read and write. Is engaged in business as an undertaker or funeral director on his own account, and his capital invested in said business worth about $2,000: owns and pays tax on real estate valued at about $1,500, which amount he has accumulated since his emancipation in 1865; lives in Jackson ward; applied for registration to the board of registration in Jackson ward about September 25th or 26th; was interrogated by the board concerning the duties of the governor under the new constitution, and informed that his answers were unsatisfactory, and he was refused registration; did not appeal because he did not believe he was bound to appeal or that he would get justice if he did.

19 Complainant Wm. H. Anderson, colored, aged forty-three, born in Virginia, resided here all his life; has lived in Richmond thirty years, and voted here ever since he was of age; can read and write; served in Spanish-American war as second lieutenant of Company C, Sixth Virginia infantry, and as regimental adjutant; is engaged in business as manufacturers' agent, and for thirteen years engaged as a keeper of a book and stationery store; applied for registration to registration board of Jackson ward September 16, 1902, they pretended to register him; registrars pretended to copy his name from his honorable discharge, exhibited to them; when petitioner offered to vote on election day he was rejected, although the election judges knew him personally, because he was registered as William A. Anderson; his description, in other respects, as to residence, age, etc., being correct; offered to be sworn as to his identity, but judges refused him; tried to find judge of corporation court, to obtain redress; found judge was out of town.

Complainant Clarence B. Gilpin, colored, age, 21; born in Richmond; lived there all his life; can read and write; graduated at Richmond normal school in 1898, after ten continuous years at Virginia public schools; clerk of an insurance company; lives in Jackson ward; applied about September 15, 1902, to registration board of Jackson ward; was examined by registration board concerning his understanding of section 141 of the new constitution, and rejected because board said his answers were unsatisfactory; appealed to the judge of corporation court and was informed his appeal was filed too late.

Twenty-fourth. Whereby, as complainants aver, the registration lists made up by said registration boards appointed by the said convention became, and were not only the unlawful registration lists of the congressional electorate of Virginia; but are, as they

20 were intended to be, by the faction which designated said registration board-, merely partisan partial lists of the lawful

electorate, containing only such names as the appointees of said convention saw fit to enroll, and excluding lawful electors of Virginia to the number of at least 100,000 in the State and in this congressional district.

Twenty-fifth. Under the laws passed by the Congress of the United States and lawfully enacted in Virginia prior to the assembling of said convention, of the State of Virginia, an election for Congressman from the ten congressional districts of Virginia should have been held in the State of Virginia upon Tuesday, November 3rd, 1902. By reason of the unlawful conspiracy aforesaid between the lawfully elected officers of Virginia, and the dominant faction in said convention, and its appointees, no such election was held. Writs of election were issued by the governor of Virginia, in the manner prescribed by law, but in taking such action he pretended to act under the Constitution unlawfully proclaimed by him as aforesaid. Judges of election at the several voting precincts of the State of Virginia were appointed for said election by the electoral boards of their several counties and cities, but the electoral boards and judges aforesaid did not take the oath to support the lawful constitution of Virginia, and only took the oath to support said spurious constitution; and whatever color of authority said electoral boards may have had to appoint said judges, by reason of their having been selected prior to the attempted proclamation of said constitution, said attempted elections were null, void and of no effect, for the further reason that the lawfully registered voters of the Commonwealth were denied the right of suffrage, and the lawfully enrolled registration lists were excluded from said elections, and, on the contrary, the only regis-
21 tration lists used by said judges, or upon which any applicant for the right to exercise suffrage was permitted to vote, were spurious and unlawful registration lists made up by the illegal and partisan registration boards designated by the ordinance of said convention; whereby said elections for representatives in Congress were conducted in violation of the laws of the State of Virginia in all respects, without the registration lists required by law; without the officers conducting same having taken the oath required by law; and were and are null, void and of no effect.

Twenty-sixth. At said election the candidates for Congress in the third congressional district aforesaid were as follows:

John Lamb was the candidate of the Democratic party, and Wm. E. Talley and B. W. Edwards were the candidates of the Republican party. The votes cast at said pretended election were not published, but whatever the said pretended returns of votes cast may be, it was a foregone conclusion before said illegal election was held, that said Democratic candidate would receive a very large vote, and said Republican candidate would receive a very small vote, because by the partisan and unlawful methods by which the registration lists were made up the Democratic voters in the district were placed upon said lists and as many Republican voters

were excluded therefrom as the partisan registration boards saw fit to exclude.

Twenty-seventh. Under the laws of Virginia enacted prior to the convening of said convention, and still recognized as in force by the schedule of said convention, the governor of Virginia, the secretary of the Commonwealth, the auditor of public accounts, the State treasurer and attorney-general, or any three of them, are constituted a board of State canvassers. The present incumbents
22 of these offices are as follows, to-wit:

Andrew J. Montague is the governor of the State of Virginia; David Q. Eggleston, secretary of the Commonwealth; Morton Marye, auditor of public accounts; Asher W. Harman, Jr., State treasurer, and William A. Anderson, attorney-general.

After each election the judges of each voting precinct are required by law to make up the returns of the vote cast in their respective precincts, and transmit them to the clerk of the county or corporation in which the election is held. The electoral board of each county and city, when it appoints election judges, designated five of the persons so appointed to act as commissioners, who, or any three of whom, constitute a board, of which the clerk of the county, corporation or hustings court is *ex officio* clerk. These commissioners meet at the clerk's office of their respective counties or corporations on the second day (which in this case is Thursday, November 6th) after the election, and upon the returns made at the clerk's office, said commissioners ascertain from the returns the persons who have received the greatest number of votes in the county or corporation for the several offices to be filled at said election. The clerk is required to make out abstracts of the votes, and said abstracts certified and signed by said commissioners and attested by the clerk, are deposited in the clerk's office, and certified copies thereof, under the official seal of the clerk, are transmitted to the secretary of the Commonwealth.

In the case of elections for representatives in Congress, the secretary of the Commonwealth, upon receipt of the certified abstracts of the votes given in the several counties and corporations constitut-
23 ing a congressional district, is required to proceed to open the same and record them in a suitable book, and to preserve in his office said abstracts for the purpose of canvassing the results of elections.

Said board of State canvassers is required to meet at the office of the secretary of the Commonwealth on the fourth Monday in November after the election (which, in the present year, is Monday, November the 24th) when, upon the certified abstracts on file in the office of the secretary of the Commonwealth, it is required to proceed to examine and make statement of the whole number of votes given at such election for representatives in Congress, which statement shall show the names of persons for whom such votes have been given for said office, and the whole number given to each, distinguishing the several districts, cities and counties in which they were given; it is also required to certify the said statement to be

correct and the members of said board must subscribe their names thereto, and said board is required to thereupon determine what persons have been, by the greatest number of votes, duly elected Congressmen from the ten several congressional districts of Virginia, and to endorse and to subscribe on such statements a certificate of such determination, and deliver them to the secretary of the Commonwealth. The secretary of the Commonwealth is required to record in a suitable book each certified statement or determination as made by the board of State canvassers, and without delay make out and transmit to each of the persons thereby declared to be elected a certificate of his election certified by him under his seal of office.

Twenty-eighth. Complainants charge that each, all and every one of the proceedings had and taken by the governor of Virginia, the secretary of the Commonwealth, the several electoral
24 boards in the State of Virginia, the judges and clerks of election, and all the other officers, to whom duties concerning elections are committed by the laws of Virginia, have, in so far as they relate to the election required by law to be held in the State of Virginia November 3, 1902, for representatives in Congress of the United States, been null, void and of no effect; that each, all and every one of said proceedings have been contrary to the law, in violation of complainants' rights, and unconstitutional, and that no election for representatives in Congress was held in the State of Virginia November 3, 1902.

Twenty-ninth. Nevertheless, complainants are advised that the judges of election appointed in and for the several election precincts in all the congressional districts of Virginia did pretend to hold such an election November 3rd, 1902; that said precinct judges did certify to the clerks of their respective counties the votes which were cast thereat on the day aforesaid; that the board of canvassers in the several counties and cities in said several congressional districts did assemble at their respective court-houses upon the 6th day of November, 1902, and did certify abstracts of the votes cast in their counties and cities respectively to the secretary of the Commonwealth at Richmond, Virginia, and that said board of State canvassers will assemble at the capital upon the 24th day of November, 1902, and will then and there, unless restrained from so doing, proceed to treat said pretended election as if it were a lawful election, and will from the spurious certified abstracts on file in the office of the secretary of the Commonwealth proceed to examine and make up statements of the whole number of votes given at said spurious election for representatives in Congress, and to certify such statements to be correct, and to subscribe their names thereto; and to determine what persons had been by the greatest number of votes duly elected to such offices, and to endorse and sub-
25 scribe on such statement a certificate of such determination and to deliver them to the secretary of the Commonwealth; and that said secretary of the Commonwealth will, unless restrained from so doing, record said certified statement of determination, and without delay make out and transmit to each of the per-

sons thereby declared to be elected false and spurious certificate of his election as a representative in Congress, certified by him under his seal of office.

Thirtieth. Complainants aver and charge that such action on the part of said board of State canvassers would do them great and irreparable injury; that the injury to them is great because the action of said board of State canvassers, if permitted to be taken, will give effect as laws to enactments, proclamations and proceedings, which control and govern their persons and their properties, their liberties, their franchises and immunities, which enactments, proclamations and proceedings have never been and are not valid or binding upon complainants, or upon any citizens of Virginia That said injury is irreparable, because it is of such a character that, unless it is restrained it can never be repaired. Complainants are freemen and voters and tax-payers in their community, and the damage done to them by these spurious and invalid proceedings, which deprive them of their franchises, take away the liberty guaranteed to them by the Constitution of the United States, and give them no voice in the Government which taxes them, is an injury which is irreparable even if it should be permitted to exist for a single minute.

Forasmuch as complainants are remediless in the premises, save in a court of equity, wherein such matters as are hereinabove set forth are properly cognizable and relievable, therefore com-
26 plainants pray that Andrew J. Montague, the governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., State treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, and constituting the board of State canvassers as defined in the Code of Virginia, 1887, section 139, be made parties defendant to this bill and duly summoned to answer the same, that this honorable court shall examine into and determine whether the said pretended constitution of Virginia, passed by the convention which assembled at Richmond on July 12th, 1901, and the schedule thereto annexed, and the ordinance passed by said convention entitled, "An ordinance to provide for the registration of voters under this convention prior to the year 1904," and the proclamation of the governor of Virginia based thereon, and the subsequent proceedings of the executive, judicial and legislative departments of Virginia, based thereon, or any of them, are or ever have been lawfully enacted, or have become obligatory and binding upon the people of Virginia, and whether, even if said constitution, schedule and ordinance were enacted according to the forms of law, they are not, nevertheless, null, void and of no effect, as contrary to the Constitution and laws of the United States; that this honorable court having decided that the said laws are null, void and of no effect, and that any election held under them is likewise void will perpetually restrain and enjoin said State board of canvassers and each and every member thereof from considering or passing upon the returns of said pretended election held November the 4th, 1902, in the State of Vir-

ginia for representatives in Congress, the same not having been held in accordance with law and being null, void and of no effect; and that the said board of State canvassers be perpetually
27 restrained from passing upon said returns; and that the secretary of the Commonwealth be perpetually restrained and enjoined from making out or transmitting to any of the persons who were candidates for election for the House of Representatives of the United States at a pretended election held in Virginia November 4th, 1902, any certificate of election certified by him under his seal of office; and inasmuch as the final determination of said questions by this honorable court may be delayed beyond the 24th day of November, 1902, complainants pray for a restraining order against said board of State canvassers, and each and every member thereof, in the nature of a temporary injunction, forbidding them and each of them from taking any proceedings whatsoever upon the certified abstracts of returns of said election in the office of the secretary of the Commonwealth of Virginia, until the further order of this court can be had in this cause. And for all such other, further and general relief in the premises as to equity and your honor may seem meet and proper under the circumstances.

WILLIAM S. SELDEN.
WM. H. ANDERSON.
CLARENCE B. GILPIN.

STATE OF VIRGINIA, *City of Richmond,* } *To-wit:*

This day personally appeared before me, the undersigned, deputy clerk of the United States circuit court for the eastern district of Virginia, William S. Selden, Wm. H. Anderson and Clarence B. Gilpin, whose names are signed to foregoing petition, bearing date 14th day of November, 1902, who, being by me duly sworn, made oath that the acts set forth in said petition, so far as stated as of their own
28 knowledge are true, and so far as the same are stated upon knowledge derived from others, they believe them to be true.

Witness my hand and official seal this 14th day of November, 1902.

JOSEPH P. BRADY,
Deputy Clerk, United States Circuit Court.

(Exhibits A, B & C, being constitution, schedule and ordinance, are omitted in printing per stipulation of counsel. See side page 190.)

139&140 And on the 15th day of November, 1902, the following order was entered and filed, to-wit:

Order to Show Cause.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM SELDEN, WILLIAM H. ANDERSON, and CLARENCE B. Gilpin, Complainants,
vs.
ANDREW J. MONTAGUE, Governor of Virginia; DAVID Q. EGGLESTON, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.

This day came the complainants by their attorneys, John S. Wise and James H. Hayes, and exhibited their bill of complaint and exhibits against Andrew J. Montague, governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia, Morton Marye, auditor of public accounts of Virginia, Asher W. Harman, Jr., treasurer of State of Virginia, and William A. Anderson, attorney-general of Virginia, constituting the board of State canvassers of Virginia, praying for an injunction against the defendants restraining and enjoining them as the board of State canvassers of Virginia from considering or passing upon the returns of an election held November 4th, 1902, in the State of Virginia for representatives in Congress, on the ground that the said election was not held in accordance with the law, and was null, void and of no effect; also praying that the secretary of the Commonwealth be per-tually restrained and enjoined from making out or transmitting to any persons who were candidates for election to the House
141 of Representatives of the United States at an election held in Virginia November 4th, 1902, any certificate of election certified by him under his seal of office, and also praying for a restraining order against said defendants in the nature of a temporary injunction, forbidding them and each of them from taking any proceedings whatsoever upon the certified abstracts of returns of said election in the office of the secretary of the Commonwealth, until the further order of this court; and for general relief.

Whereupon, it is ordered that each, all and every of said defendants, to-wit: Andrew J. Montague, governor of Virginia, David Q. Eggleston, secretary of the Commonwealth of Virginia, Morton Marye, auditor of public accounts of Virginia, Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, constituting the board of State canvassers of Virginia, be and they are hereby summoned to appear

before this court at Richmond, Virginia, on the 20th day of November, 1902, at 11 o'clock, a. m., to show cause, if any they have or can show, why the temporary restraining order prayed for in said bill in the nature of a temporary injunction, should not be granted against them and each of them in accordance with the prayers of said biil.

Ordered further that the complainants cause copies of said bill and of this order to be served upon each of said defendants on or before the 17th day of November, 1902, but not copies of said exhibits, they being public documents, which are accessible to the said defendants.

EDMUND WADDILL, JR.,
U. S. Judge.

142 *Marshal's Return.*

I certify that I this day delivered a true copy of the petition in the above case, together with a true copy of the above order, upon the following named defendants: Andrew J. Montague, governor of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia.

MORGAN TREAT,
United States Marshal, Eastern District of Virginia.

Richmond, Virginia, November 15th, 1902.

And further executed on the 17th day of November, 1902, by delivering a true copy of the petition in this case, together with a true copy of the order therein, upon the following named respondents: David Q. Eggleston, secretary of the Commonwealth, in person at his office in this city (Richmond, Virginia); and by delivering a true copy of said petition and order to Mrs. William A. Anderson, wife of William A. Anderson, attorney-general of Virginia, at his residence 301 E. Franklin street, Richmond, Virginia, and explaining the same to her, Mr. Anderson being absent from the city.

MORGAN TREAT,
United States Marshal,
By M. A. COLES,
Chief Office Deputy.

143 *Special and Limited Appearance of Defendants.*

Filed November 20th, 1902.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggeston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants.	In Equity. No. 538.

We, the undersigned attorneys at law, hereby appear in behalf of the respondents in the above-named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein against the respondents, and for that purpose alone; and, without waiving the objection to the jurisdiction of this court or the said limited and special appearance, but insisting thereon, the undersigned move the court to enlarge the rule heretofore issued in this cause, which was made returnable to this day, until Friday, the 28th day of November, 1902, at eleven o'clock a. m., in order that the said respondents may have further time to make answer to said rule. And this appearance is made specially and solely for the purpose of objecting to the jurisdiction of this court in said cause, and for no other purpose whatsoever; and said motion for the enlargement of said rule is in no way intended to waive the objection to the jurisdiction of this court, or to impair the special and limited character of this appearance.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
FRANK W. CHRISTIAN,
Counsel for Respondents.

144 And on the 20th day of November, 1902, the following order was entered and filed:

Order.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Defendants.	In Equity. No. 538.

This day came the respondents, by their attorneys, William A. Anderson, attorney-general of Virginia, and Frank W. Christian, and entered their special and limited appearance for the purpose of objecting to the jurisdiction of this court in this cause, and for no other purpose.

And, not waiving their said special appearance, the attorneys for the respondents moved the court to enlarge the rule hereinbefore granted until Friday, the 28th day of November, 1902; said limited and special appearance being in writing and filed with the papers in this cause. And, accompanying said motion to enlarge the rule, the respondents, by their counsel, in consideration of the enlargement of the said rule, give the court and opposing counsel the assurance that said board of State canvassers will not ascertain the result of the votes cast, or issue any certificates of election to the candidates for representatives in the Congress of the United States at the election held November 4th, 1902, in the State of Virginia, until after the 28th day of November, 1902; unless otherwise ordered by some court of competent jurisdiction, provided, further, that in case any legel proceedings shall be instituted in any other court to compel said board of State canvassers to canvass said votes or issue said certificates, said board will immediately notify counsel for the petitioners so as to give them opportunity to protect their rights before said board acts under any order which may be issued by another court.

Thereupon, the petitioners not objecting to the entry of the said order, said rule is accordingly enlarged.

EDMUND WADDILL, JR.,
United States Judge.

Answer of Defendants.

145 Answer.

Injunction Suit.

SELDEN and Others, Complainants, *vs.* VIRGINIA STATE BOARD OF CANVASSERS, Respondents.	Answer of Respondents to Rule to Show Cause Why a Temporary Injunction Shall Not be Awarded.

William A. Anderson, attorney-general, and
Frank W. Christian, for the respondents.

145*a* In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM SELDEN, WILLIAM H. ANDERSON, and CLARENCE B. GILPIN, Complainants, *vs.* ANDREW J. MONTAGUE, Governor of Virginia; DAVID Q. EGGLESTON, Secretary of the Commonwealth of Virginia; MORTON MARYE, Auditor of Public Accounts of Virginia; ASHER W. HARMAN, Jr., Treasurer of Virginia, and WILLIAM A. ANDERSON, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	In Equity.

The answer of the above-named respondents to a rule heretofore awarded in this case, which was made returnable on the 20th day of November, 1902, and afterwards enlarged to this day, requiring the said respondents to show cause, if any they can, why a temporary restraining —, as prayed for in the bill, should not be granted them and each of them in accordance with the prayers of said bill.

These respondents, for answer to said rule, answer and say:

(1.) They deny that this court has any jurisdiction to entertain this suit, or to enter any order therein, because the same is a suit against the State of Virginia, and is in violation of the eleventh amendment to the Constitution of the United States. The said Andrew J. Montague is governor of the Commonwealth of Virginia; the said David Q. Eggleston is secretary of the Commonwealth
146 of Virginia; the said Morton Marye is auditor of the public accounts of the Commonwealth of Virginia; the said Asher W. Harman, Jr., is treasurer of the Commonwealth of Virginia, and the said William A. Anderson is attorney-general of the Common-

wealth of Virginia. As such officers of the State of Virginia, they constitute the board of State canvassers under the provisions of section 139 of the Code of Virginia of 1887, which reads as follows:

"SECTION 139. Board of State canvassers.—The governor, secretary of the Commonwealth, auditor of public accounts, State treasurer, and attorney-general, or any three of them, shall constitute the board of State canvassers."

The duties of said board are defined and set forth in section 142 of the Code of Virginia of 1887, which reads, as follows:

SEC. 142. How election returns canvassed by State board, and certificates of election given.—For the purpose of canvassing the result of elections, the board of State canvassers shall meet at the office of the secretary of the Commonwealth on the fourth Monday in November next after the election, when they shall, upon the certified abstracts on file in the office of the secretary of the Commonwealth, proceed to examine and make statements of the whole number of votes given at such election for attorney-general, members of the senate and house of delegates, representatives in Congress, and electors of President and Vice-President of the United States, or for so many of said officers as have been voted for at such election, which statements shall show the names of persons to whom such votes have been given for either of the said offices, and the whole number given to each, distinguishing the several districts, cities and counties in which they were given; they shall certify such statements to be correct and subscribe their names thereto, and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices, or either of them, and shall endorse and subscribe on such statements a certificate of such determination, and deliver them to the secretary of the Commonwealth. The secretary of the Commonwealth shall record in a suitable book to be kept by him in his office for the purpose, each certified statement and determination as made by the board
147 of State canvassers, and shall without delay make out and transmit to each of the persons thereby declared to be elected (except the attorney-general, who shall be commissioned by the governor), a certificate of his election, certified by him under his seal of office. In the election of a senator, he shall forward to the clerk of the senate a certificate of the election of such senator; and in the case of the election of a member of the house of delegates, he shall forward to the clerk of the house of delegates a certificate of the election of such member. And upon the first day of the session of the General Assembly, he shall lay before each house a list of the members elected thereto, with the districts they represent. In case of special elections to fill vacancies held at any other time than that fixed for general elections, the board of State canvassers shall meet at the office of the secretary of the Commonwealth on the day after the returns of such elections are received, for the purpose of canvassing the result of such special elections in the manner hereinbefore set forth; and if all the abstracts of votes to be counted shall not have been received within the twelve days, the said board shall adjourn

from day to day until they shall be so received by the secretary of the Commonwealth."

The acts and things required to be done by the said statute can be performed by these respondents only in their official character as members of the board of State canvassers, and none of the said things can be done by any member of the said board individually. The said sections 139 and 142 were enacted in the year 1870 in substantially the same form in which they now stand upon the statute books of Virginia. (See Acts of 1869–'70, chap. 76, sections 45, 48 to 50.) Respondents were elected to their offices under the constitution and laws of the State of Virginia, existing prior to the adoption of the present constitution and registration ordinance, referred to in the bill; and the validity of said sections 139 and 142 of the Code of Virginia is not denied or questioned by the complainants; and the title of respondents to their officers as *de jure* and *de facto* officers cannot be denied.

In order that a suit may be a suit against a State, it is not
148 necessary that the State shall be a party to the record. The suit is equally forbidden if it is against officers of a State in any case where the suit directly affects the State's property, rights, liabilities, or political and governmental action.

In determining whether a particular suit against a State officer constitutes a suit against the State, regard must be had to the nature of the right asserted and the relief sought in each particular proceeding.

When the precise right claimed and the precise relief sought in the present suit is clearly understood, it becomes plain that the suit is one against the State itself. Let us enquire briefly what is the precise right asserted and the precise relief prayed in this proceeding.

The allegations of the bill are greatly lacking in clearness and precision; but, giving those allegations the most favorable interpretation to the pleader, the case stated by the bill is as follows: That all three of the complainants suffered wrong at the hands of the registrars, in either refusing or failing to put their names upon the registration list; and that one of the complainants suffered wrong at the hands of the judges of election in their refusal to receive his vote.

The averment as to two of the complainants is, that they were duly qualified voters of the State; that they applied to register; that the registrars refused to place their names upon the registration list. As to one of them, it is alleged that he took no appeal from this refusal of the registrars, "because he did not believe he was bound to appeal, or that he would get justice if he did." And as to the other complainant, the averment is that he "appealed to the judge of the corporation court, and was informed his appeal was filed too late."

In passing, these respondents deem it proper to stamp this reflection upon the honorable judge of the corporation court of the city of Richmond as absolutely gratuitous and unfounded.

In respect to the excuse given by the other complainant, for failing to appeal, it is needless to say it presents no justification at all

for the omission to do what he might do, and ought to have
149 done, to protect his rights by the means afforded him by the registration ordinance.

Neither of these two complainants allege that they offered to vote at all. Their only grievance, therefore, consists in having been rejected by the registrars, which rejection they made no effort to redress in the manner pointed out in the registration ordinance.

As to the other complainant, William H. Anderson, the averments of the bill are, that he also was a qualified voter, by reason of having served as a soldier, and that he had been honorably discharged. That when he applied for registration, the registrars pretended to register him, and pretended to copy his name on the registration list, from his discharge, which was exhibited to them; and that he offered to vote on election day, but that his vote was rejected, although the election judges knew him personally, because his name was entered on the registration list as William *A*. Anderson. That his description in other respects on the registration list was correct; that he offered to be sworn as to his identity, but the judges refused him; that he tried to find the judge of the corporation court to obtain redress, and found the judge was out of town.

So far as the failure, whether it was intentional or not, on the part of the registrars to enter the name of this complainant on the registration list is concerned, these respondents submit that it was the duty of the said Anderson to have examined the registration list in due time to ascertain whether or not his name was correctly entered thereon, and to have had the error corrected by appeal to the courts, as permitted by law, for which there was ample time and opportunity under the provisions of the registration ordinance, since the registration was required to be closed on or before October 15, 1902, and the election did not take place until November 4, 1902.

So far as the action of the judges of election in rejecting his vote is concerned, that action was apparently proper under the language of the statutes of Virginia relating to voting, which were passed long
prior to the adoption of the existing constitution of Virginia.
150 Those statutes are embodied in sections 125, 126 and 127 of the Code of Virginia of 1887—the first (section 125) being amended by an act of the General Assembly of Virginia, approved March 6, 1890 (Acts of 1889–'90, p. 191).

Those statutes read as follows:

"SEC. 125. How ballots received and names of voters entered on poll books.—The judge to whom any ballot is delivered shall upon receipt thereof pronounce with an audible voice the name of the person from whom the ballot is received, and if the name of the person is found on the registration book, and there be no objection made, the said judge shall, without opening said ballot or permitting the same to be examined (except to ascertain whether it is a single ballot), deposit the same in the ballot-box; whereupon the name of the elector shall be checked on the registration book by one of the judges, and entered by the clerks of election on the poll-

books and correctly numbered in accordance with the number of electors theretofore recorded. * * *"

"SEC. 126. Challenges.—Any elector may, and it shall be the duty of the judges of election to, challenge the vote of any person who may be known or suspected not to be a duly qualified voter."

"SEC. 127. How challenge tried.—When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him as to the same; and if the person insists that he is qualified, and the challenge is not withdrawn, one of the judges shall tender to him the following oath: 'You do solemnly swear (or affirm) that you are a citizen of the United States, that you are twenty-one years old, that you have resided in this State for twelve months, and in this county, city, or town, for the three months next preceding this election; and that you are not disqualified from voting by the constitution or laws of this State; that your name is (here insert the name given); that in such name you were duly registered as a voter of this election district; that you are now an actual resident of the same; that you are the identical person you represent yourself to be; and that you have not voted in this election, at this or any voting place. So help you God.' * * *"

(See Code of Virginia, 1887, sections 126 and 127; Acts of
151 1889–'90, p. 191, or Supplement to the Code of Virginia (1898), p. 20).

Under the letter, certainly of these provisions, of the statute law, the judges had no power to receive the vote of any person whose name was not actually on the registration list.

As to the allegation that the complainant Anderson sought redress, but found the judge of the hustings or corporation court out of the city, the statutes of Virginia then and now in force expressly provide that in the absence of the judge of the hustings or corporation court, or his inability from any cause to discharge any official duty required by law, such duty may be discharged by the judge of any of the other courts of record in the city of Richmond, of which there are three. (See Code of 1887, section 3079; and section 7 of an act establishing the law and equity court of the city of Richmond (Supplement to Code (1898), p. 330.)

Besides, jurisdiction of writs of mandamus is conferred by statute on all the courts of the said city, and the judges thereof in vacation. (See Code of 1887, sections 3080, 3069, 3058 and 3218; Supplement to Code (1898), pp. 328–9.)

So that, if Anderson was entitled to have his vote accepted, still he failed to avail himself of all the remedies afforded for the protection of that right.

But all of this is not necessary in answer to the case stated in the bill; and these respondents have gone into this detail more for the purpose of vindicating the election officers from the imputations of intentional wrongdoing, cast upon them in the bill, than from any sense that such answer was necessary upon the legal merits of the particular matter. For, whether the failure on the part of Anderson

arose from his own fault, or from the errors, or even frauds, of the election officers, it still remains that the rejection of his vote arose merely in the administration of the law, and not from any failure in the law itself to provide ample remedies to secure the rights of voters. Such miscarriages must always occur, in special cases, in the execution of a law; but they constitute no reason for holding the law itself to be void.

152 If complainants are right in the contention that the constitution and registration ordinance are void, it plainly follows that any registration of their names under said ordinance would have been equally void; and that, therefore, the failure or refusal to put their names on the registration list could not constitute a legal wrong.

If, on the other hand, the said constitution and registration ordinance are valid in law, then the complainants were plainly bound to avail themselves of the means pointed out in the ordinance for any refusal to register them, if they were qualified. And, in either purview, so far as registration is concerned, they cannot complain; and their grievance in that respect would resolve itself into a case of loss or damage, without injury.

But let it be assumed that a wrong was done the complainants by the refusal or failure of the registrars to put their names upon the registration books, and by the alleged refusal of the judges of election to allow the complainant Anderson to vote. It still remains that the wrongs so committed are past, and that this suit is not brought for the purpose of redressing those wrongs; nor can any relief granted in this suit have the effect of redressing those alleged wrongs. The present suit is not for the purpose of recovering damages for any refusal to register the complainants, or for any refusal to receive their votes at the election held on November 4, 1902. Being a suit in equity, it, of course, could not have that object or effect. The suit is not brought against the registrars who conducted the registration, nor the judges who conducted the election. It is not brought, and could not be brought at this stage, if it could be at any time, for the purpose of compelling the registrars to place their names upon the registration list, nor to compel the judges of election to receive their votes; nor for the purpose of enjoining either of those classes of officers from interfering with and hindering them in the exercise of their alleged rights of registering and voting.

The right of each qualified voter to cast his vote is at least a separate and distinct right. When he sues in damages for the deprivation of that right, or brings proceedings to specifically enforce its enjoyment, he in no way interferes with the rights and in-

153 terests of other voters. Courts of the highest authority have denied that equity has any jurisdiction to specifically enforce, by injunction mandatory or otherwise, the enjoyment even of this distinct and separate right to vote, because the right is one that is political in its character; and it follows *a fortiori* that the relief asked here will not be granted since it cannot be enforced by a court of equity without interfering with the political functions and duties

of officers of elections, and also affecting the rights of others not before the court.

In the present case, the complainants are not seeking the enforcement of these primary rights, but are asking that this court will declare the entire election held on November 4, 1902, to be void, and, upon that ground, will restrain this board from canvassing the returns of the election from the whole State of Virginia, and from ascertaining the result of the said election, and from issuing certificates of election to those persons who received a majority of the votes cast at that election for members of the House of Representatives.

The present suit, therefore, does not seek to enforce or to obtain redress for the primary right of the complainants to vote, if they were qualified to do so. The grievances set out by them can be redressed, if at all, only in an action at law. They cannot support the present bill; and the acts sought to be enjoined, if performed, would not constitute a legal injury or support an action at law.

In addition to this, the relief prayed could not be granted without affecting the rights of others not before the court; and it would necessarily and directly interfere with and obstruct political officers of the government in the discharge of purely political and governmental functions and duties.

If this be a correct statement of the precise relief prayed in this case, it is plain, under the decisions of the United States Supreme Court, we submit, that the case constitutes a suit against the State of Virginia, within the prohibition of the eleventh amendment to the Federal Constitution.

In the case of *Cunningham v. Railroad Co.*, 109 U. S., 452, Mr. Justice Miller, delivering the opinion of the Supreme Court
154 of the United States, defined the two classes of cases in which suits against officers of a State could be maintained in the Federal courts without violating the eleventh amendment.

The first class of cases stated by him are cases where the officer is sued in an action at law for some act injurious to the plaintiff, and the officer seeks to justify his action under a State statute which is unconstitutional. This class of cases refers to actions to recover damages for the wrongful act after it is performed, and must necessarily be in the form of an action at law. The present case is, of course, not of that description, being a bill in equity, seeking, not damages for past acts, but an injunction against future acts, and it may be said in passing, against a future act which, if performed, could not constitute a legal wrong.

The second class of cases defined by Mr. Justice Miller, in delivering his opinion in the said case of *Cunningham v. Railroad Co.*, 109 U. S. 452, refers to cases in which the Federal courts have been called upon, either by mandamus as an incident to a jurisdiction already vested in them, or by injunction, mandatory or otherwise, to compel or restrain the doing of some act on the part of the defendant who is an officer of a State.

In defining this class of cases, Mr. Justice Miller used the following carefully guarded language, saying that such a suit could be

maintained "where the law has imposed upon an officer of the Government a *well-defined* duty in regard to a *specific matter, not affecting the general powers or functions of the Government*, but in the performance of which one or more individuals have a *distinct interest capable of enforcement by judicial process.*" (Italics ours.)

Mr. Justice Miller adds that the Federal courts, in entertaining some cases arising under this class, have gone to the "verge of sound doctrine, if not beyond it, and that the principle should be extended no further." 109 U. S., 453.

If this case be tested by the limits defined in this carefully selected language, it is palpable that it goes far beyond the bounds fixed by the court. In the first place, the complainants have not a
155 distinct interest in the performance of the duties imposed upon the board of State canvassers; but an interest intermingled with that of every other member of the body politic in Virginia. All persons who voted at the election held on November 4, 1902, have an interest in the action of the board of State canvassers, which is sought to be restrained. All persons who failed to vote at that election are presumed in law to have assented to the action of a majority of those voting, and are, therefore, interested. The candidates for the House of Representatives, voted for, have an interest. And, in addition, the Commonwealth of Virginia and the United States, each has a profound interest—not a property interest, nor an interest of a pecuniary character, but an interest of the most fundamental and important character in their governmental and political capacities. The State of Virginia is entitled to representation in Congress under the Constitution of the United States, and, therefore, has a direct interest, which would be necessarily obstructed, interfered with and, indeed, actually destroyed by any order in this court; for no relief prayed in the bill can be granted at all except upon the ground that the election held on November 4, 1902, was itself void.

Inasmuch as any relief whatever given in this cause will necessarily affect this important interest of the Commonwealth of Virginia, she is an indispensable party to the bill. If these respondents represent her, the suit is forbidden by the eleventh amendment to the Constitution of the United States. If these respondents do not represent her, then the proceeding is absolutely barred by the fact that she is an indispensable party, and cannot be brought before the court.

The precise right, then, the enforcement of which is sought in this case, is not a distinct right of the complainants, not mingled with the rights and interests of others; and, therefore, it does not come within the language so carefully framed by Mr. Justice Miller, above quoted.

When we come, on the other hand, to consider the duties and functions of these respondents, as constituting the board of State canvassers, it will be seen that, in relation to them, this case goes far beyond the limits prescribed by Mr. Justice Miller, deliv-
156 ering the opinion of the United States Supreme Court in the case above referred to. The duties and functions in question

do not constitute "a well-defined duty in regard to a specific matter," but, on the contrary, constitute all the functions and duties that this board is required to perform under the law. Those duties, while in one sense ministerial, are also duties involving executive discretion; and, more than all, they fall outside the limitations fixed by the Supreme Court of the United States, because those duties affect deeply and fundamentally "the general powers and functions of the government."

The duties of this board are strictly political and governmental in their nature, affecting the entire body politic in its relation to the State and Federal governments. The precise relief prayed, then, in this case is necessarily against these respondents in their political and governmental capacities, and, therefore, necessarily constitutes a suit against the political action of the State itself, and would necessarily affect rights and interests of the State and the people generally, of which the State itself is the only representative under the principles of public law.

The respondents discharge their duties solely as a board; and, in the discharge of those duties, they have no private interest whatever.

If what we have said be correct, it follows that the present suit is an effort to restrain this board in the performance of duties and functions that are purely executive, political and governmental, under a statute of Virginia, passed in pursuance of a power derived from the Federal Constitution itself; duties and functions devolved upon this board solely as a public and governmental agency in the performance whereof not only the Commonwealth of Virginia but the United States itself is profoundly concerned.

For these reasons, we submit this case is a suit against the State, and prohibited.

(2.) The respondents further say if they should be in error in the contention above set forth that this case constitutes a suit against Virginia, still they claim, for the reasons already stated, that the right asserted by the complainants is a political right,
157 and that the duties and functions sought to be restrained are political, governmental and executive duties and functions; and this court is, therefore, without any jurisdiction to entertain the suit, or make any order therein.

(3.) The respondents further say that the Constitution of the United States, article I., section 4, clause 1, provides as follows:

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators."

Congress has heretofore allowed the States to make regulations on this subject. Shortly after the Federal Constitution was adopted, Virginia, in pursuance of this provision, enacted laws apportioning her representation in Congress, declaring when and how members of the House of Representatives should be chosen, providing for the returns of such elections and declaring the results thereof. (See 12

Hen. Stats. at Large 653; 13 do. 331; 1 Tuck. Bl. 191.) These methods have from time to time undergone modification in form; but it is believed regulations on the subject have continually existed under the statute law of Virginia. Statutes passed many years ago are now in force in Virginia on the subject, and the statute in relation to canvassing the returns and issuing certificates of election (being section 142 of the Code, already quoted) has been in force in substantially the same form since its enactment in 1870. This statute is a valid act of the legislature, passed pursuant to an authority prescribed by the Federal Constitution, and establishes the method, and the only method, for ascertaining and certifying the results of election of members of the House of Representatives in Virginia.

The duties to be performed by the board in relation thereto, fundamentally affect the constitution of the House of Representatives, and, thus, the Federal Government itself. If an injunction will lie against this board to prevent their canvassing said returns and declaring the results of the said election, and issuing certificates of election to the persons elected, it would be equally competent for the
158 court to restrain all of the steps in the election of representatives in the lower house of Congress, and all the officers of election, among others the judges who receive the votes and make returns to the board of election commissioners, and, next in order, the board of election commissioners who canvass the returns in the various localities, and make return thereof to the board of State canvassers. And thus it would be competent for this court to stop the whole machinery for the casting of votes, the counting of votes, the return of the votes, and the ascertainment of the results of elections for members of the House of Representatives; and thus to hinder, impede and prevent the election of members of that house under the only law in force—Congress never having exercised its power to prescribe regulations on the subject.

These respondents respectfully submit that this court has no jurisdiction to restrain or interfere with the exercise of the public duties of this board in relation to elections to the House of Representatives, which forms a part of a co-ordinate branch of the Federal Government.

(4.) Respondents further say that the Constitution of the United States, article I., section 5, clause 1, provides as follows:

"Each house shall be the judge of the elections, returns and qualifications of its own members. * * *"

Respondents submit that this provision of the Constitution, making the House of Representatives the judge of the elections and returns of its own members, makes it the sole judge thereof.

The bill in this case seeks to have this court decide that the election held on November 4, 1892, for members of the House of Representatives was null and void; and that the returns of said election are null and void; and to restrain these respondents from canvassing said returns and certifying the results of that election. The exercise of such a jurisdiction, if not arrested, would ultimately destroy the independence of a co-ordinate department of the government.

It may be said that the specific relief prayed for here is limited to an injunction against canvassing the returns and issuing certificates of election, and that it is still competent for the House of
159 Representatives to send for those returns and canvass them and declare who, if any one, has been elected at the said election. Suppose the relief prayed for be looked at in this restricted manner. Still, it remains that this court would exercise a jurisdiction to interfere with and control one of the instrumentalities and agencies provided by a statute of Virginia passed pursuant to a provision of the Federal Constitution itself, for the purpose of vesting in this board the exercise of the jurisdiction and functions which the complainants are seeking here to have this court interfere with and restrain. Not only would such an interference be contrary to fundamental principles of a republican government; but it is manifest that even a temporary interference, although the lower house of Congress might disregard or reverse any order this court might enter, might at least temporarily affect the membership and organization of the House of Representatives. It is needless to point out that, by the concurrent action of several courts, or even by the action of a single judge, if this jurisdiction were recognized, the political complexion of the House of Representatives might be changed, at least for a time; and the great difficulties in the way of remedying such an interference, which would deprive members of the house of their *prima facie* right, are manifest. Nor is it necessary that these respondents should comment upon the danger that the judicial tribunals would be dragged into the arena of partisan politics and the evil consequences that would flow therefrom.

But, in truth, the relief prayed in this bill goes even further than is thus supposed, for, while the specific relief is restricted, as above stated, the right to that relief is based, and solely based, upon the ground that the election held on November 4, 1902, was absolutely null and void; and, under the frame of the bill in the case, no order or decree whatever can be entered by the court in favor of the complainants, except upon the basis and decision that the said election was wholly void. If this court should make such a decision, whom would it bind? Surely, it will not be contended that the representatives elected would be bound. They could still apply to the House of Representatives to be seated. Surely, it will not be
160 contended that the House of Representatives itself will be bound. The only escape from the position that such a decision would trench upon the independence and prerogatives of the House of Representatives, and upon the rights and privileges of the persons elected to that house, would be in the concession that the decision and decree of this court would be futile as to those most directly interested in it. It is respectfully submitted that no court will enter a decree in the air, which cannot bind those persons who are mainly and directly interested, and which the court is wholly without the power of enforcing, in an effective way, simply to gratify complainants who (not seeking redress of their primary rights) are

attempting to have the court pass in a moot case upon constitutional questions of the most important and fundamental character.

The separation of the powers of government forms the keystone of the republican arch, and is commanded by the Constitution of the United States and of the different States, including Virginia. It is plainly inconsistant with the existence and security of the House of Representatives that any court shall have power to interfere with and enjoin officers clothed with the duty of superintending the election and returns of its members.

(5.) The Commonwealth of Virginia is also deeply interested, and its rights would necessarily be affected by any order this court should make in this case. The Commonwealth of Virginia, representing the people of Virginia, is granted representation in the lower house of Congress by the Federal Constitution. And these respondents respectfully submit that it cannot be tolerated, under our institutions where the independence of the State and Federal governments each from interference with the other in its operations within its legitimate sphere is guaranteed, that a Federal court, under the guise of protecting the rights of individual voters, should have power, by writ of injunction, to deprive the entire people of the Commonwealth of Virginia of representation in the lower house of Congress, guaranteed to them by the Constitution of the United States.

If the courts can interfere, and withhold writs of election
161 from the representatives in one State, they may do so in many at the same time, and thus deprive not only the people of a State of their representation in the lower house of Congress, but effectually destroy the existence of the House of Representatives of the United States.

And if the courts may interfere for the purpose of preventing the issuance of certificates of election, they can likewise interfere to prevent the holding of the elections themselves.

Such a jurisdiction, if recognized, would in time imperil the existence of government and the continuance of free institutions.

(6.) Respondents further submit that under the rules of equity, no order can be made in the absence of indispensable parties; and that in this case the rights and interests of others than the complainants would be necessarily directly affected by any relief granted in this cause; and, therefore, the court cannot proceed. And, especially, it is insisted that if it be considered that the suit is not a suit against Virginia, by reason of its being brought against these respondents as officers of the State, nevertheless the State has such interests and rights in the relief prayed for, and will necessarily be so affected thereby, that the said relief cannot be granted in the absence of Virginia as a party to the record; and, as she cannot be brought before the court, the court has no jurisdiction of this suit.

(7.) Respondents further submit that, in order that the complainants may maintain this suit, they must show not only that it is embraced within the Federal Constitution, but also within the jurisdiction of this court as conferred by an act of Congress granting the

particular jurisdiction. And these respondents submit that there is no act of Congress conferring jurisdiction upon this court in such a case as this; and, therefore, this court, upon this ground also, is without jurisdiction to entertain this suit or grant any relief therein.

(8.) The primary right of the plaintiffs, if they were duly qualified voters, was the right to vote. We have seen that the bill is not based directly upon the existence or denial of this specific right. The averments in the bill, touching the alleged existence and denial of the right to register and vote, form merely the induce-
162 ment, and not the gravamen, of the suit. The relief prayed in the bill is based (if it has any ground at all to stand upon) upon some supposed right of the plaintiffs to prevent commissions issuing to representatives in the lower house of Congress from all the districts in Virginia, because they were improperly denied a voice in the election of the representative from the third district. The only interest the plaintiffs had in the declaration of the result of the election, even of the representative from the third district, is in consequence of their alleged right of suffrage, and is one which they enjoy in common with all the other voters of that district. This is an interest such as all citizens have in public matters, but it does not constitute a right, within the true sense of that word in the law. In other words, it is in no wise a substantive or enforcible right by any proceeding in court. The only substantive and enforcible right is the right to vote, including, of course, the steps enabling that right to be exercised; and that right may be redressed by appropriate proceedings in the court, founded directly upon the violation of the specific right, and against proper parties of whom the court has jurisdiction. But when the election has been concluded, and the returns come to be counted and canvassed, and the results of the election to be declared, then it is obvious that no single voter or class of voters has a right to restrain the issuance of a certificate of election to the candidate receiving a majority of the votes cast, although the plaintiffs may have been denied the right of voting under the provisions of an unconstitutional statute. Otherwise, it is apparent that a few voters, or even a single voter, might nullify the results of an election, because his right to vote at the election had been improperly refused. In such cases, the only remedy lies in a contest of the election before the House of Representatives, which has full jurisdiction to decide the matter, and can, if it sees fit, unseat the person claimed to be elected, and seat the rival candidate, or nullify the election and order a new one, as the House shall think proper upon the case made.

This court cannot exercise a general jurisdiction, even in cases where civil and property rights are concerned, much less can
163 it where merely political rights are in question, to enjoin the execution of a State statute because it is claimed to be, or is actually, unconstitutional, unless such relief is asked upon a case stated by the plaintiffs, directly based upon a sufficient ground of action, appropriate for judicial cognizance and relief, against proper parties subject to the jurisdiction of the court.

The case stated for relief under this bill is not of that character, but merely makes out an abstract or moot case: and the plaintiffs bring this bill evidently for the purpose, not of redressing the alleged grievances suffered by them, but in order to get the opinion of the court upon the abstract question whether the constitution of Virginia is a valid constitution, and whether the suffrage article of that constitution is a valid suffrage article.

(9.) Further, the said bill cannot be maintained, for the reason that the complainants will not suffer irreparable damage nor any damage at all, if this court shall decline to grant the relief prayed for in this bill.

(10.) Further, if as complainants contend, the said constitution and ordinance are void on their face, or if as complainants allege, they are full handed with proof to show such invalidity, then, upon the principles settled in equity, this court would have no jurisdiction to declare the election held on November 4, 1902, void, or to enjoin the issuance of certificates of election to the persons receiving the largest number of votes at that election, for the reason that the action of this board could not give any additional effect or validity to the said election and to the said writs if they are void, as the plaintiffs claim; and the action of this court in the premises would, upon the case stated, be unnecessary. The only effect of any decree entered here would be to affect temporarily the right of the successful candidates to occupy their seats in the House of Representatives, and this would infringe upon the rights of that House.

(11.) While these respondents do not feel that it is either necessary or proper that they should at this stage notice or answer all the details of the complainants' bill, it is deemed proper that they
164 should notice and take issue upon some of the positions and statements made in said bill, which they will now proceed to do:

(*a.*) In the first place, they think it is not improper that they should express the surprise they feel to find that at this late day, nearly forty years after the end of the late unhappy war, serious reliance should apparently be placed upon the restrictions upon the State of Virginia in respect to suffrage attempted to be imposed by the act of Congress of January the 26th, 1870.

The right of suffrage is one derived from the State itself. The only limitation upon the power of the State springs from the provision of the Constitution of the United States that such right shall not be abridged or denied on account of race, color or previous condition of servitude. The only right in respect to suffrage derived from the Federal Constitution is the right to be exempt from discrimination on account of race, color or previous condition of servitude; and the right of voters in the State who have the qualifications prescribed by the State for voters of the most numerous branch of the State legislature to vote for members of Congress.

The right of a State to determine for itself from time to time according to then existing exigencies what persons or classes of persons possess sufficient intelligence, virtue and interest in the Com-

monwealth to entitle them to exercise the right of voting is one of the most fundamental and important rights which can belong to a free people. The existence of such right to regulate suffrage is as important to those who may be unfit for its exercise as it is to the welfare and happiness of those entrusted with it, and it may be safely affirmed that this right to regulate suffrage within its borders is possessed by the State of Virginia to the same extent and in the same degree as it is by the States of Massachusetts or New York. It is denied that the restrictions attempted to be imposed by the act of Congress of January the 26th, 1870, were ever expressly accepted by the State of Virginia. Even the legislature of the State would have no power to impose such a fundamental limitation upon the power of the State.

The act of Congress of January the 26th, 1870, was part and parcel of the reconstruction legislation adopted by Congress after the
165 war, which legislation has never been passed upon directly, we believe, by the Supreme Court of the United States; but it can hardly be said that there is any doubt in the professional mind of this country as to what fate that legislation would have received if it had ever been allowed to be subjected to the decision of the Supreme Court of the United States.

That tribunal has held repeatedly that, while the effect of the late war was to establish hostile governments in the States who undertook to secede and to sever temporarily the relations of the *governments* of those States to the Union, the *States* themselves were never beyond its pale, and that after the question of the right of those States to secede had been settled by the arbitrament of arms, they remained in the Union, subject to the duties and limited surrender of power contained in the Federal Constitution and also entitled to all the rights granted by it or reserved to themselves or their people.

The power to pass the reconstruction measures was based solely upon the requirement of the Constitution that "the United States shall guarantee to every State in this Union a republican form of government."

Under this provision, Congress had the right to adopt only such measures as were necessary and appropriate to secure that result. The power was a power of guaranteeing or insuring, not a power of originating or establishing provisions of government in the several States.

We have seen that a government may be republican in form without a universal or unlimited suffrage. Indeed, it is inconsistent with any wise or well-ordered government that there should be a basis of suffrage which is unalterable in view of the changing circumstances and conditions of the body politic. It must, therefore, be palpable that the restriction embodied in the act of Congress of January the 26th, 1870, was not a necessary and appropriate means of guaranteeing to the State of Virginia a republican form of government and that, therefore, Congress had no power in this extra-

constitutional method to inject any such restriction into the fundamental law of this State.

When the people of Virginia had adopted the constitution
166 of 1869 and elected executive and legislative officers and members of the House of Representatives they had organized a republican form of government as required by the Federal Constitution, and the obligations of Virginia (the principal obligor) to the Constitution of the United States having been performed, there remained nothing for the guarantor to do.

The right of representation in Congress belonged to the State of Virginia under the Constitution of the United States as much as it did to the other States in the Union, and it was entitled to the enjoyment of that right without condition and without restriction. Accordingly, it must follow that this restriction upon the fundamental rights of the State as a condition to the enjoyment of its constitutional right to representation in Congress was not binding upon the State either in law or in morals.

(*b.*) The schedule and the ordinance of registration referred to in the bill formed a part of, and were incidental to, the constitution of 1902. The ordinance is referred to repeatedly in the constitution itself as a part of its provisions, and some of the articles of the constitution were made dependent for their effect and execution upon the said ordinance.

The respondents submit that the whole of the said constitution, schedule and ordinance were validly adopted by the constitutional convention and that the same became operative and effective for all purposes as a constitution of this Commonwealth on the 10th day of July, 1902, in accordance with the mandate of the said convention.

The power of the convention to ordain the constitution without submission for ratification to the vote of the people is beyond serious question. Mr. J. R. Tucker, in his work on the Constitution, says:

"During the last half century or more it has been the usual practice for the convention to frame the constitution and then submit it to a popular vote for final ratification. But this practice has had exceptions, and it may be safely stated that the validity of a constitution will not be held to depend upon its final ratification by popular vote."

1st Tucker on the Constitution, page 69.

167 This learned constitutional author points out that the first constitutions of all of the original States, including Virginia, were ordained by conventions without ratification by the people; that the first constitution of Virginia, drawn by George Mason and so ordained, was held to be valid by our court in *Kamper v. Hawkins*, 1st Va. Cases, 20, and that the Constitution of the United States was adopted by a convention and ratified by conventions in the several States without submission to popular vote and that the various amendments of the Federal Constitution have been adopted without

ratification by the people; that the same practice has been adopted recently in several of the Southern States, and that in the case of Mississippi the validity of its constitution so adopted was affirmed in the case of *Williams v. Mississippi*, 170 United States, 213, remarking, however, that it seemed that the question under discussion was not raised in that case.

It may be added that the Virginia constitutional conventions of 1830 and of 1850 in effect ordained their suffrage articles, submitting the residue of the constitution to the enlarged class of voters enfranchised by them.

It is respectfully submitted that a convention representing, as it does, the body politic, itself has inherent and absolute power to ordain a constitution without submitting it back to the people themselves. This is still clearer in Virginia, when the provisions of article 12 of the constitution of 1869, which provide for changes in the constitution, are examined. The first section of article 12 provides for changes to be effected through the medium of two legislatures of the State, chosen at successive elections, it being provided that amendments may be proposed and if agreed to by a majority of the members of both houses, the same shall be referred to the General Assembly chosen at the next general election; and if that General Assembly shall agree to the proposed amendment it shall be its duty to submit the amendment to the people; and if the people approve and ratify the amendment, it shall become a part of the constitution.

Section 2 of article 12 is in strong contrast with the pro-
168 visions just referred to. Section 2 provides for the adoption of a new, revised or amended constitution, through the action of a constitutional convention, and instead of providing that its action shall be submitted to ratification by popular vote, it entirely omits any such requirement, and by the plain meaning of the language used confers final and absolute power upon the convention itself to ordain the constitution adopted by it. It is provided that at the general election to be held in the year 1888 and in each twentieth year thereafter and also at such time as the General Assembly may by law provide, the question, "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to the qualified electors.

In pursuance of this provision, the legislature of Virginia, by an act passed on March 5, 1900, submitted the said question in those prescribed terms to the people. The election held under the said act resulted in favor of the convention. This definitely fixed the status and powers of the convention beyond the reach of further legislative interference or restriction. The constitution provided, "in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the General Assembly at its next session shall provide by law for the election of delegates to such convention."

By an act passed on February the 16th, 1901, the legislature did, in obedience to this constitutional requirement, provide for the elec-

tion of members of the convention. To that extent, and to that extent only, was the act of February the 16th, 1901, constitutional and binding. The addition thereto requiring the constitution adopted by the convention to be submitted to ratification by the vote of the people was beyond the legislative power.

In addition to this, it is believed that no constitution adopted by a convention and recognized by all the departments of government has ever been held by any court to be invalid. What constitutes the constitution of a State and when the same has become operative and effective and binding upon the people are political questions; and it has been held by courts of the highest authority that
169 when a constitution has been so recognized and accepted by all departments of government in the State, as has been done in the case of the present constitution of Virginia, the question of its validity is closed and cannot be any longer open to question. In addition to the acts of recognition referred to in the bill, the said constitution has been recognized by acts passed by the General Assembly of Virginia and approved by the governor since the said constitution went into effect.

So that, even if there could be any serious doubt about the original power to ordain the constitution of 1902, and if this question is one which can ever be passed upon by the courts of another jurisdiction than that of the State itself whose constitution is the subject of inquiry, in the present case the bill alleges the fact that the constitution of 1902 and its schedule and ordinance have been recognized by every department of government, and we, therefore, submit that its constitutionality and validity cannot now be questioned or denied.

(*c.*) Respondents submit and maintain that it was neither necessary nor proper that members of the convention should take any oath as officers of the State under the former constitution of the State and that it is a matter of no moment, so far as the validity and effect of the said constitution is concerned, whether such oaths were taken or not.

(*d.*) These respondents deny that the right of citizens of the United States to vote is denied or abridged on account of race, color or previous condition of servitude by the provisions of the said constitution, schedule or ordinance of registration, or any of them. It is submitted that there is not a single provision in the said constitution, schedule or ordinance which makes the slightest distinction between citizens of the United States on account of race, color or previous condition of servitude. It is also denied by these respondents that any denial or abridgement of the rights of citizens of the United States to vote has been made on account of race, color or previous condition of servitude by the State of Virginia or by the officers of the State of Virginia in the enforcement, application and execution of the provisions of the said constitution, schedule
170 and ordinance, or any of them. These respondents are informed and believe that the provisions of the ordinance of registration have been generally, if not in all cases, fairly and im-

partially administered without such alleged discrimination by the registrars selected and appointed by the constitutional convention as being men of character and standing in their various localities. In the discharge of their duties, the registrars were subject to severe penalties of fine and imprisonment under the statute of Virginia if they wilfully or maliciously rejected from registration or corruptly registered any person contrary to law. (See section 3854 of the Code of Virginia of 1887.) And if the registrars either purposely or by mistake improperly refused registration to any person, means of redress were afforded by appeal to the circuit and corporation courts in the different counties and cities of the State, with a right of further appeal to the supreme court of appeals, the highest court in the State, without liability for costs.

(*e.*) These respondents deny as scandalous and false the unfounded statements contained in the bill, to the effect that the governor of Virginia and the other executive officers of the State, the judges of the courts of record of the State and the members of the General Assembly of the State have united in an attempt to abandon the government of Virginia under which they were elected to office, in violation of their duties to the people or have attempted to establish and proclaim said constitution and impose the same on the people of Virginia contrary to their will, without giving the people of Virginia an opportunity to be heard, well knowing they would never ratify the same; and also the charge that the said officers, executive, judicial and legislative, have been at any time in conspiracy with the "dominant faction in said convention" for the purpose of accomplishing those results, as alleged in the bill, or for any other purpose whatsoever; or have entered into any combination or conspiracy with said "dominant faction" or any other persons or set of persons for any purpose whatsoever, as complained of in the bill. It is true that the said officers of the State, executive, judicial and legislative, have recognized the said constitution as a valid and binding
171 instrument, but they have not done so in pursuance of any combination or conspiracy of any kind, but, as your respondents believe and aver, because they were of opinion that it was their plain duty to recognize and support its provisions.

These respondents do not deem it necessary to reply in any further detail to many other matters contained in said bill, because it is not deemed proper or material to do so at this time. The said constitution has not only been thus expressly recognized by every department of the government of the State, but has been acquiesced in and accepted by the great body of the people of Virginia. It is proper to consider the disastrous consequences of now unsettling what has thus become an accomplished political fact of the highest importance in the State and to point out that the result of a decree to that effect emanating from this honorable court would necessarily produce a condition of unrest, uncertainty and chaos destructive of the peace, good order and welfare of the State.

In view of these results, as well as the other injurious consequences in the various other aspects heretofore pointed out in this answer

which would flow from such a decree, it is respectfully submitted that this court will weigh with the most anxious care the grounds of its jurisdiction and the right of the complainants to the relief sought in their bill before it will undertake to enter any decree in this cause.

And having fully answered, these respondents ask to be excused from further attendance upon this court.

ANDREW J. MONTAGUE,
Governor of Virginia.
D. Q. EGGLESTON,
Secretary of the Commonwealth of Virginia.
MORTON MARYE,
Auditor of Public Accounts of Virginia.
ASHER W. HARMAN, JR.,
Treasurer of Virginia.
WILLIAM A. ANDERSON,
Attorney-General of Virginia.

WILLIAM A. ANDERSON,
Attorney-General of Virginia,
FRANK W. CHRISTIAN,
Counsel for Respondents.

172 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, John S. Eggleston, a notary public in and for the city and State aforesaid, do hereby certify that Andrew J. Montague, D. Q. Eggleston, Morton Marye, Asher W. Harman, Jr., and William A. Anderson whose names are signed to the foregoing answer, this day personally appeared before me, in my said city, and made oath that the statements of fact contained in said answer, so far as made upon their own knowledge or information are true and that so far as said statements are made upon information derived from others, they believe them to be true.

Given under my hand this 27th day of November, 1902.

JOHN S. EGGLESTON,
Notary Public.

(My commission expires March 15, 1905.)

173 And thereupon afterwards, to-wit: on the 28th day of November, 1902, the said cause came on to be heard before the Honorable Melville W. Fuller, Chief Justice of the United States, allotted to the fourth circuit and Honorable Edmund Waddill, Jr., United States district judge for the eastern district of Virginia, and was argued by John S. Wise, Esquire, for the complainants, and by Frank W. Christian, for the defendants.

174 And on the following day, to-wit; the 29th day of November, 1902, the said cause came on again to be heard before the Honorable Melville W. Fuller, Chief Justice of the United States,

allotted to the fourth circuit and the Honorable Edmund Waddill, Jr., United States district judge for the eastern district of Virginia and was argued by the Honorable William A. Anderson, the attorney-general for the State of Virginia, for the defendants and John S. Wise, Esquire, and James H. Hayes, Esquire, for the defendants and submitted.

Memorandum of Chief Justice.

Filed November 29th, 1902.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, Clarence B. Gilpin *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers.	No. 538. In Equity.

Application for an injunction restraining defendants from passing on the returns of an election held November 4, 1902, in the State of Virginia, for representatives in Congress, and the secretary of Virginia from making out and transmit-ing certificates of election &c.

The rule heretofore granted herein will be discharged, and the application denied, because of want of jurisdiction.

The application is, in effect, against the Commonwealth, and the subject matter is political.

That a court of equity has no jurisdiction as such in cases within which this case falls, settled in this circuit in Green *vs.* Mills, 69 Fed., 852.

175 *Memorandum of Honorable Edmund Waddill, Jr., United States District Judge.*

Filed November 29th, 1902.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin
vs.
ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia.
No. 538. In Equity.

Believing, under the decisions of the courts of the United States, by which this court is, and should be governed, that neither of the actions now before the court can be maintained, I, for that reason, concur in the result arrived at by the Chief Justice, dismissing the same, and may hereafter file a brief memorandum in writing, embodying my views.

It is, in frankness, due however, that I should say that while I believe that this is the law, as settled by decisions, it does not entirely embody my personal views as to what that law ought to be. I can but believe that as to rights, arising under, and guaranteed to the citizen by the Constitution and laws of the United States, injuriously affecting one hundred thousand people, whether respecting their property, or their personal or political rights, and particularly the two latter classes, that they ought to be given a day in court; afforded an opportunity for a full and speedy hearing; and to that end, that technicalities, forms and ceremonies should, in large measure, be dispensed with, speedy justice afforded, and the rights of the respective parties litigant ascertained.

176 And on the 29th day of November, 1902, the following order was entered and filed, to-wit:

Order Discharging Rule and Dismissing Bill.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin *vs.* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and Wm. A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia.	In Equity. No. 538.

This day came this cause, to be again heard, upon the papers formerly read, and upon the answer of the defendants, filed November the 28th, 1902, to the rule awarded in this cause November the 15th, 1902, to which the plaintiff replied generally, and was argued by counsel,—

Whereupon, the court, for reasons stated in writing, hereby made a part of this order, doth adjudge, order and decree that the rule hereinbefore granted, citing the defendants to appear and show cause why an injunction should not be granted, as prayed in said bill, be and the same is hereby discharged, and the court doth further adjudge, order and decree that the plaintiff's bill be and the same is hereby dismissed, with costs.

MELVILLE W. FULLER,
Chief Justice of the United States, Allotted to Fourth Circuit.

177 *Petition of Complainants for Appeal.*

Filed January 3rd, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants,
versus
ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.
} In Equity. No. 538.

To the honorable judges of the circuit court of the United States for the eastern district of Virginia:

The petition of William S. Selden, William H. Anderson and Clarence B. Gilpin respectfully represents to your honors that they are aggrieved by a decision of this honorable court rendered in the above entitled cause on the 28th day of November, 1902, whereby the court refused to entertain jurisdiction of their bill and entered a final decree dismissing the same and awarding costs against complainants.

A copy of the record in the case is hereto attached.

This petition humbly prays for an appeal from said final decision to the Supreme Court of the United States.

Accompanying this petition are the assignments of error required by the rules of said court, and the bond likewise required by said rules.

All which is respectfully submitted.

COMPLAINANTS,
By JNO. S. WISE,
Their Solicitors.

178 *Assignment of Errors.*

Filed January 3rd, 1903.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants, *versus* ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.	In Equity. No. 538.

Assignments of error.

On behalf of the complainants the following assignments of error are filed with their petition for appeal, as required by rule 35.

First Assignment of Error.

The court erred in holding that the State was a necessary party to this proceeding.

The substance of the prayer was not to compel the State to do anything, but to prevent officers of the State from violating a plain duty.

Jurisdiction in such cases has been sustained in the Federal court in many causes.

Board *v.* McComb, 92 U. S., 531.
Davis *v.* Gray, 16 Wallace, 203.
Ralston *v.* Missouri Fund Comm'rs, 120 U. S., 391.
Blanton, Comm'r *v.* Southern Fertilizer Co., 77 Va., 335.
Kellogg *v.* Warmouth, *et al.*, 14 Fed. Cases, No. 7667.

179 *Second Assignment of Error.*

The court erred in refusing to entertain the suit, for lack of jurisdiction, because—

The rights asserted are protected by section 1979 of the Revised Statutes. The bill complained of an attempt by the defendants to subject complainants and others of their class to the deprivation of rights, privileges and immunities secured by the Constitution

and laws, under color of alleged statutes, ordinances and constitutions of Virginia, which complainants aver were not lawully passed, and not constitutional if passed.

The jurisdiction of the circuit court, to entertain such cases, is expressly conferred upon it by section 629 of the Revised Statutes, paragraph 12th, which confers jurisdiction of suits to enforce the right of citizens of the United States to vote in the several States, and by paragraph 16th, which confers upon it jurisdiction of all suits brought to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage of any State, of rights, privileges and immunities secured to the complainants by the Constitution of the United States, or by the laws providing for equal rights of citizens of the United States.

This particular form of suit is allowed to complainants, both by the language of section 1979 of the Revised Statutes, which authorizes them to bring *a suit in equity* for redress, and by section 722 of the Revised Statutes, whereby it is expressly provided that the jurisdiction in civil matters conferred on the circuit court by the provisions of the title "civil rights" shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into
180 effect; *but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law as modified and changed by the constitution and statutes of the State, wherein the court having jurisdiction of such civil rights is held so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause.*

The aforegoing provisions were not modified by the amended jurisdiction act of August 13th, 1888 (Supp. to R. S. vol. 1, 611). On the contrary, they were expressly preserved intact. These provisions not only declaring and defining the jurisdiction, but enlarging and modifying and adapting it, so that it would not be deficient on account of precedents, were utterly ignored by the court below; and therein it erred.

Third Assignment of Error.

The court erred in refusing to entertain jurisdiction of a suit in equity to restrain the parties.

The rights of the complainants, which were interfered with, arose under a Federal statute. The wrong was under the color of a State statute. The Federal court, by the law, was empowered, in administering the remedy, to proceed, if need be, in the same manner the State courts would have proceeded.

Precedents in the State courts are abundant to show that they have, and have exercised, jurisdiction in such cases.

Blanton, Comm'r *v.* Southern Fertilizer Co. 77 Va., 335.
Pearson *v.* Supervisors, 91 Va., 322.
Spelling on Injunc. and Other Remedies, vol. 2, sec. 1744.
Kellogg *v.* Warmouth and others, 14 Fed. Cases, No. 7667.

181 If the bill had stated that the board of State commissioners were throwing dice to determine to whom they should issue the certificate, there is no doubt that a State court would have restrained them. The State would not have been a necessary party. It would have been simply to prevent officers from violating a plain duty. If the State courts could, the Federal courts can.

Fourth Assignment of Error.

The court ought to have entertained jurisdiction of the cause, and ought to have proceeded to hold that the alleged constitution, ordinances and schedule, under which defendants were acting, were null, void and of no effect; that the returns which defendants were attempting to act upon were nullities; and that defendants should be enjoined from computing or tabulating or certifying the results of said returns, or issuing any certificates thereon to any persons as members of Congress—because—

The answer filed by defendants did not traverse the allegations of fact contained in the bill, and defended only on questions of law, and the court considered and disposed of the case as on a demurrer to the bill.

Fifth Assignment of Error.

The court erred in making a final decree in the cause and dismissing it with costs? for the prayer of the bill was not only for an injunction, but for general relief.

It complained not only of the particular act threatened to be done by defendants on November 26th, 1902, but of a conspiracy onerous and continuing, to which defendants were parties, and under which and under color or certain spurious constitutions, ordinances and schedules, complainants and those of their class were and would be subjected by defendants to the deprivation of their political
182 rights, not only in the election involved, but by the same methods in other Federal elections, provided for by law, thereafter, unless the court should declare the spurious constitution, ordinance and schedule void, and prohibit the defendants from acting then or thereafter in their character as a board of State canvassers, under color of said spurious constitution, ordinance and schedule to the deprivation of the rights, immunities and privileges of complainants and their class. By adjudications of the State and Federal courts, the suit was properly brought on behalf of complainants and all others in their class, and the case should have been retained and the rights of the complainants to the general relief prayed for should have been considered and passed upon, even if the special injunction prayed for immediately was denied.

There was no adequate remedy at law to redress the grievances set forth in the bill, and the suit in equity was necessary on behalf of the class, to avoid multiplicity of suits. Especially was this equi-

table interference justifiable in view of the extraordinary jurisdiction conferred by section 722 of the Revised Statutes, with the plain intent and purpose to reach and to redress, throughout the circuit court, without regard to form or precedent, flagrant violations of the laws referred to in that section.

Sixth Assignment of Error.

The court erred in dismissing said bill.

1. Because complainants derived their rights as voters in said congressional election from the Constitution of the United States and laws enacted pursuant thereto, as well as from laws of Virginia.

2. Because the civil rights statutes created a jurisdiction in
183 the circuit court to hear said suits and authorized complainants to invoke the remedy which was denied them by said erroneous judgment.

3. Because the State courts of Virginia possessed jurisdiction to grant the relief prayed for in the form in which it was asked in this suit.

4. Because by express enactment of Federal statutes the circuit court was invested with full power to administer the remedy in the same manner as a court of the State of Virginia might have done.

5. Because in a Federal court the judiciary not only possessed the power to employ the remedies available in the State court, but not being part of the State organizations, its power to apply the remedy was unrestrained by any consideration of invading the province of a co-ordinate department of its own government, such as might influence the State judiciary.

The foregoing specific assignments of error cover, as it is believed, the requirements of the rule under which they were filed, but the plaintiff appellants, by counsel, in view of the importance of this cause and the wide range of subjects necessarily involved in its discussion, will pray the honorable, the Supreme Court of the United States for leave to discuss at the hearing all the subjects involved in said appeal, and not to confine them to the specific points designated above.

All which is respectfully submitted.

COMPLAINANTS,
By JNO. S. WISE,
JAS. H. HAYES,
Their Solicitors.

Richmond, Virginia, December 16th, 1902.

184 And on the 3rd day of January, 1903, the following order was entered allowing appeal, to-wit:

Order Allowing Appeal.

In the Circuit Court of the United States for the Eastern District of Virginia.

WILLIAM S. SELDEN, WILLIAM H. ANDERSON, and Clarence B. Gilpin, Complainants,
versus
ANDREW J. MONTAGUE, Governor of Virginia; David Q. Eggleston, Secretary of the Commonwealth of Virginia; Morton Marye, Auditor of Public Accounts of Virginia; Asher W. Harman, Jr., Treasurer of Virginia, and William A. Anderson, Attorney-General of Virginia, Constituting the Board of State Canvassers of Virginia, Respondents.
} In Equity. No. 538.

It is ordered this third day of January, 1903, upon the petition of the complainants, and assignments of error thereto annexed, that an appeal to the Supreme Court of the United States from the final decree made in the above cause on the 28th day of November, 1902, be, and the same is hereby, allowed, and a certified transcript of the record and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that a bond of five hundred dollars be filed for damages and costs on appeal.

EDMUND W. WADDILL, JR., *Judge.*

185 *Appeal Bond.*

Filed January 3rd, 1903.

Know all men by these presents, that we, William H. Anderson of Richmond, Virginia, as principal, and J. B. Johnson of Manchester, Virginia and E. T. Jenkins of Richmond, Virginia, as surety, are held and firmly bound unto Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, in the full and just sum of five hundred dollars, to be paid to the said Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts; Asher W. Harman, Jr., treasurer of Virginia, and William

A. Anderson, attorney-general of Virginia, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of January, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the circuit court of the United States in and for the eastern district of Virginia, in a suit pending in said court, between William S. Selden, William H. Anderson and Clarence B. Gilpin, complainants and Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, constituting the board of
186 State canvassers of Virginia, defendants, a decree was rendered against the said William S. Selden, William H. Anderson and Clarence B. Gilpin, and the said William S. Selden, William H. Anderson and Clarence B. Gilpin having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia, Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within twenty days from the date thereof.

Now, the condition of the above obligation is such, that if the said William S. Selden, William H. Anderson and Clarence B. Gilpin shall prosecute their appeals to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM H. ANDERSON. [SEAL.]
J. B. JOHNSON. [SEAL.]
E. T. JENKINS. [SEAL.]

Sealed and delivered in presence of—

JOSEPH P. BRADY,
Deputy Clerk U. S. Circuit Court.

Approved by—

EDMUND WADDILL, JR.,
United States District Judge.

187 UNITED STATES OF AMERICA, ss:

The President of the United States to Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia; Asher W. Harman, Jr., treasurer of Virginia, and William A. Anderson, attorney-general of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington within twenty days from the date hereof, pursuant to an appeal from a decree of the circuit court of the United States in and for the eastern district of Virginia in your favor passed in a cause in said court wherein William S. Selden, William H. Anderson and Clarence B. Gilpin are the complainants and you are the defendants to show cause, if any there be, why the decree rendered against the said complainants in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., judge of the district court of the United States this third day of January, in the year of our Lord one thousand nine hundred and three.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

188 On this eight day of January, in the year of our Lord one thousand nine hundred — three, personally appeared Samuel Bendit, deputy United States marshal before me, the subscriber, and makes oath that he delivered a true copy of the within citation to A. J. Montague, Morton Marye, Asher W. Harmon, Jr., William A. Anderson, on January 6th, 1903, and to David Q. Eggleston, on January 8th, 1903, in the city of Richmond, Va.

SAMUEL BENDIT,
Deputy U. S. Marshal.

Sworn to and subscribed the eight day of January, A. D. 1903.

JOSEPH P. BRADY,
Dep'y Clerk U. S. Circuit Court.

Marshal's Costs.

Fees	$10.00
Expenses	.35
	$10.35

189 *Order to Transmit Record.*

In pursuance of an order of court entered in said cause a transcript of the record and proceedings, together with all things thereunto relating is hereby accordingly transmitted to the Supreme Court of the United States.

Teste: M. F. PLEASANTS, *Clerk*,
By JOSEPH P. BRADY, *Deputy Clerk*.

Clerk's Certificate.

UNITED STATES OF AMERICA, *Eastern District of Virginia*, } ss:

I, M. F. Pleasants, clerk of the United States circuit court for the eastern district of Virginia, do certify that the foregoing is a true transcript of the record and proceedings of the said court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said court, at Richmond, Virginia, this 8th day of January, A. D. 1903.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk*,
By JOSEPH P. BRADY,
Deputy Clerk.

190 In the United States Supreme Court, October Term, 1903.

SELDEN and Others *against* THE BOARD OF STATE CANVASSERS. } No. 190. In Equity on Appeal from Cir. Ct. U. S., E. Dist. of Va.

JONES and Others *against* THE BOARD OF STATE CANVASSERS. } No. 189. In Prohibition on Writ of Error from Cir. Ct. U. S., E. Dist. of Va.

Stipulation.

The undersigned stipulate as follows concerning the above entitled causes now pending in the Supreme Court of the United States and numbered 189 and 190, October term, 1903.

That the exhibits referred to in the bill in the one case and the petition for prohibition in the other case are identical, and that said exhibits need only be printed with the record in case 189, and need not be reproduced in the record of case 190; but it shall be sufficient, if the clerk of the Supreme Court, in printing said record,

shall, in lieu of embodying said exhibits in full, make a memorandum that said exhibits are not reproduced in the record in case 190, because of this stipulation, whereby it is agreed that the exhibits, to wit: the constitution, schedule and ordinance printed with case 189 may be referred to on the argument of case 190, as if the same were therein again set forth at length.

Witness our signatures this 5th day of August, 1903.

JNO. S. WISE,
For Appellants & Plaintiffs in Error.
WILLIAM A. ANDERSON,
Attorney General of Virginia and Counsel for Appellees and Defendants in Error.

191 [Endorsed:] File Nos. 18,783 & 18,784. Supreme Court U. S. October term, 1903. Term Nos. 189 & 190. Wm. H. Jones *et al.*, *vs.* A. J. Montague, governor, *et al.* Wm. S. Selden *et al.*, *vs.* A. J. Montague, governor, *et al.* Stipulation of counsel as to printing of records. Filed August 6th, 1903.

Endorsed on cover: File No. 18,784. E. Virginia C. C. U. S. Term No. 190. William S. Selden, William H. Anderson, and Clarence B. Gilpin, appellants, *vs.* Andrew J. Montague, governor of Virginia; David Q. Eggleston, secretary of the Commonwealth of Virginia; Morton Marye, auditor of public accounts of Virginia, *et al.* Filed January 13, 1903.